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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948

No. 75

ELMER UVEGES, PETITIONER,

vs.

COMMONWEALTH OF PENNSYLVANIA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED DECEMBER 1, 1947.

CERTIORARI GRANTED JUNE 7, 1948.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

No. 1482A Miscellaneous Docket

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES, Apt.

v.

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

DOCKET ENTRIES

August 22, 1947, petition of appellant for allowance of appeal from judgment of the Superior Court at No. 148 April Term, 1947, with acceptance of service endorsed thereon, filed.

ORDER

September 29, 1947, petition denied.

Per CURIAM:

June 11, 1948, Certified copy of order on Forma Pauperis, Motion and Petition for Writ of Certiorari of Supreme Court of the United States, as follows, filed:

> On petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.
>
> On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 844.
>
> June 7, 1948.

September 7, 1948, Supplemental Certiorari to the Court of Common Pleas of Allegheny County at No. 3611 October Term, 1946-C, issued.

September 7, 1948, Praecipe of counsel for Appellant for certification in forma pauperis of the record to the Supreme Court of the United States, filed.

September 8, 1948, Record filed.

[fol. 2] IN THE SUPREME COURT OF PENNSYLVANIA, AT PITTSBURGH, APRIL TERM, 1947

No. 148

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES

v.

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

Appeal of Elmer Uveges

DOCKET ENTRIES

Appeal from the judgment of the Court of Common Pleas of Allegheny County at No. 3611 October Term, 1946-C

February 1, 1947, Appeal and affidavit filed and writ exit.

February 8, 1947, Notice of Appeal filed.

April 8, 1947, Record filed.

April 24, 1947, Submitted Decision 236.

July 17, 1947. Order is affirmed, Rhodes, P. J.

July 29, 1947, Remitted.

August 22, 1947, Petition of appellant for leave to appeal to the Supreme Court filed at No. 1482A Miscellaneous Docket.

For Appellant: Elmer Uveges, I. P. P.

For Appellee: Artemas C. Leslie, Louis L. Kaufman.

[fol. 3] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA, OCTOBER TERM, 1946 C

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss:

No. 3611

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES

vs.

STANLEY P. ASHE, Warden Western State Penitentiary

APPEARANCE DOCKET ENTRY

October 1, 1946, Habeas Corpus—Rule. Petition and Affidavit filed. October 1st, 1946, Petition presented, ordered filed and a Rule is granted on the District Attorney of Allegheny County, Penna. and Stanley P. Ashe, Warden Western State Penitentiary, Pittsburgh, Pa. to show cause why a writ of Habeas Corpus should not issue. Rule returnable to October 21, 1946. All costs to be paid by Allegheny County. January 20, 1947. After due consideration of the petition filed and the answer made, the petition for writ of habeas Corpus is dimissed and the writ is denied. The Prothonotary is directed to mail a copy of this opinion and Order of Court to the Petitioner and to Stanley P. Ashe, Warden of the Western State Penitentiary. All costs to be paid by County of Allegheny. Eodie, Memo, Opinion filed. February 7, 1947, Certiorari from the Superior Court on appeal of Elmer Uveges filed. February 11, 1947, Answer to Petition for Writ of Habeas Corpus presented in open Court and the same is directed to be filed nunc pro tunc as of October 21, 1946. July 29th, [fol. 4] 1947, Remitturer from Superior Court filed, showing "Order is affirmed. Exemplification filed. September 7th, 1948. Supplemental Certiorari from the Supreme Court on appeal of Elmer Uveges filed.

From the Record.

David B. Roberts, Prothonotary. By E. L. Herndon, Deputy.

[fol. 5] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

[Title omitted]

ORDER GRANTING RULE TO SHOW CAUSE

October 1st, 1946, the within petition is ordered filed and a rule is granted on the District Attorney of Allegheny County, Pennsylvania and Stanley P. Ashe, Warden, Western State Penitentiary, Pittsburgh, Pennsylvania, to show cause why a writ of habeas corpus should not issue; rule returnable to October 21, 1946.

All Costs to be paid by Allegheny County.

By the Court.

H. R., President Judge.

[fol. 6] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY

[Title omitted]

PETITION FOR WRIT OF HABEAS CORPUS—Filed October 1, 1946

To the Hon. Joseph P. Egan, Judge of the Court of Common Pleas:

Elmer Uveges, hereinafter named relator, now in the custody of Warden Stanley P. Ashe, respectfully submits:

That on October 27, 1938, at the age of seventeen, he and a companion of the same age pleaded guilty before the Hon. Frank P. Patterson, trial judge, to four indictments charging Burglary. The prison sentence imposed by the court was five to ten years on each indictment to run consecutively, making a total of twenty to forty years. Relator now claims that the proceedings of October 27, 1938, were contrary to "due process of law," and directly opposed to latest rulings issuing from both higher courts. In support of said claim he respectfully sets forth:

1. Relator was not accorded his constitutional right to be represented by and have the advice of counsel. He was

not advised by the court of this right and no offer was extended to supply counsel. In the case of Com. ex. rel. Shultz v. Smith, Warden, No. 206, Pa. Superior Ct., Misc. Docket No. 43, President Judge Keller wrote:

> "The right to be represented by counsel is a fundamental right, going to the very basis of criminal law, and places on the trial judge the onus to inform the defendant of his rights and to assist him in obtaining the benefits of those rights. The failure of the [fol. 7] court to inform him of his right amounts to a denial of the right. . . . The failure of the court to so inform him or to appoint counsel for him was fundamental error."

From the opinion of Mr. Justice Sutherland in Powell v. Alabama, 287 U. S. 45, are these words: "He requires the guiding hand of counsel at every step in the proceedings against him." Here the Honorable Justice is referring to an *adult* and intelligent layman forced to defend himself without counsel.

2. Relator's signature does not appear on any of the indictments. However, he does recall signing a paper which he now believes to have been a "waiver." The contents of this paper were not read by him, nor was he informed of their nature. This proceeding is contrary to an Act of Assembly, June 11, 1935, P. L. 319, No. 141, Sec. 1, which reads as follows:

> "In all criminal cases, except where a sentence of death or *imprisonment of ten years or more* may be imposed, the defendant shall have the privilege, *with the consent of his attorney of record*, the judge and the district attorney, to waive trial by jury. Such waiver must be in writing, signed by the defendant, and shall operate as an election by the defendant to be tried by a judge without a jury." (Emphasis by relator.)

3. In law the status of a 17-year-old is defined as a child, or juvenile. The signature of such a person to any contract entailing great responsibility would be invalid except under conditions sanctioned by a court of law. If this guardianship is the protection of a minor in civil actions, is it not equally important that similar protection be extended

in criminal actions? Yet this relator, a minor without any knowledge of law or his rights under it; in a situation described by one Superior Court jurist as "hostile territory," was compelled to shoulder a burden which Mr. Justice Sutherland declared was beyond the power of an intelligent layman. Nervous and unable to think clearly, frightened by threats of dire consequences if he dared to stand trial, relator pleaded guilty under the direction of an [fols. 8-9] assistant district attorney, with the understanding that a sentence to Huntington Reformatory would be imposed.

It may be relevant here to mention that in June, 1939, a law was enacted increasing the jurisdiction of the Juvenile Court to include sixteen- and seventeen-year-old children. Although enacted after the twenty to forty years was imposed, it preceded relator's eighteenth birthday which was July 5, 1939.

Relator therefore prays that a writ of habeas corpus issue, commanding Warden Stanley P. Ashe to produce the body of Elmer Uveges before your honorable court on a certain day, there to do and receive what shall be considered concerning this petition.

And relator will ever pray, etc.

Elmer Uveges, Relator.

Elmer Uveges, being duly sworn, on oath deposes and says that he is the relator named in the foregoing petition, and that the contents are true of his own knowledge.

Subscribed and sworn to this 26 day of September, 1946. Elmer Uveges, Relator.

R. C. Wieseckel, Notary Public.

My Commission Expires May 1, 1948. (Seal).

[fol. 9a] [File endorsement omitted.]

[fol. 10] IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA, OCTOBER TERM, 1946-C

No. 3611

Sur: Petition for writ of habeas corpus

COMMONWEALTH OF PENNSYLVANIA, ex rel., ELMER UVEGES

versus

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

MEMO OPINION—Filed January 20, 1947

ROWAND, P. J.:

The petition for writ of habeas corpus in this case was received through the mail and the same day was ordered filed. A rule was granted on Stanley P. Ashe, Warden, Western State Penitentiary, and the District Attorney of Allegheny County to show cause why a writ of habeas corpus should not issue. Answers have been filed.

It is true, as alleged in said petition, that the relator did plead guilty before his Honor, Frank P. Patterson, trial judge of this court, on four indictments charging burglary. Sentence was imposed on each indictment and under the sentences his minimum term will expire October 15, 1958. The sentences are regular and in conformity with the practice and law.

There can be no complaint as to the sentences. It is also set forth in the Answer of the District Attorney that there are at least eight additional indictments in which the de- [fol. 11] fendant pleaded guilty and sentence was suspended by reason of sentences at other indictments. Relator complains that he was not accorded his Constitutional right to be represented by and have the advice of counsel. It is not alleged that he was denied a request to be represented by counsel. While a signature does not appear on the indictments, but that omission is not an error nor can it in any way effect the legality of a sentence imposed on a plea of guilty in open court.

The records disclose that there was no jury trial but the relator, with other defendants, appeared before the

court and entered a plea of guilty. We know of no law or ruling that a minor cannot enter a plea of guilty and be sentenced for a crime. As was held in the case of Com. ex. rel. James Slifko v. Stanley P. Ashe, Warden, 144 Pa. Super. Ct. 593, it was stated at page 595:

> "There is no provision in the Bill of Rights in our Constitution requiring the Court to appoint counsel to defend or represent one accused of crime who announces his desire to plead guilty to the offense charged before trial:
>
> Com. ex rel. Curtis v. Ashe, 139 Pa. Sup. Ct. 417;
> Com. ex rel. Campbell v. Ashe, 141 Pa. Sup. Ct. 408."

Further, the case of Com. ex rel. Campbell v. Ashe, 141 Pa. Super. Ct. 408, at page 411, the Court states:

> "As the relator severally pleaded guilty to all the indictments, the Court was under no duty to appoint counsel to represent them. They knew whether or not they were guilty of the offenses charged. They do not, even in these proceedings, deny their guilt."

We have examined the record in this case and find no error that would warrant the issuing of the writ as prayed for. Therefore, the petition is dismissed and the writ denied.

[fol. 12] ORDER OF COURT

January 20, 1947, after due consideration of the petition filed in this case and Answer made by the District Attorney of Allegheny County, and Stanley P. Ashe, Warden, the petition for writ of habeas corpus is dismissed and the writ is denied.

The Prothonotary is directed to mail a copy of this opinion and order of court to the petitioner and to Stanley P. Ashe, Warden of the Western State Penitentiary.

All costs to be paid by County of Allegheny.

By the Court, H. R.

[fol. 12a] [File endorsement omitted.]

[fol. 13] In the Court of Common Pleas of Allegheny County

[Title omitted]

Answer—Filed nunc pro tunc as of October 21, 1946

To the Honorable, the Judges of Said Court:

Now comes Artemas C. Leslie, District Attorney of Allegheny County, Pennsylvania, by Louis L. Kaufman, Esq., who files the following Answer.

First: It is admitted that on October 27, 1928, the within relator pleaded guilty to four indictments charging him with Burglary, and was sentenced five to ten years on each indictment; the sentences to run consecutively. These indictments are indexed at Nos. O&T 81, 82, 83 and 84 October Term.

Second: It is further averred that the same relator was indicted at O&T 85 to 93 inclusively; and sentences on these were suspended by reason of the sentences in Paragraph One.

Third: It is denied that relator was deprived of his Constitutional rights to be represented by counsel. It is not alleged that he was denied a request for such representation.

Fourth: It is admitted that relator's signature does not appear on the indictments, but it is averred by the Com-[fol. 14] monwealth such omission to sign the plea of guilty is not a vital error; nor does it effect the legality of the sentence imposed on a plea of guilty in open court.

Fifth: It is denied that this relator signed a waiver of a Jury Trial. The records indicate that there was no jury trial, and that the relator pled guilty. In the opening paragraph of the relator's petition, he admits it was a plea of guilty.

Sixth: It is denied that a plea of guilty cannot be entered by a minor. Memo: In the case of Commonwealth ex rel. James Slifko v. Stanley P. Ashe, Warden, No. 144 Pa. Superior Ct. 593, where Warden stated at page 595:

> "There is no provision in the Bill of Rights in our Constitution requiring the Court to appoint counsel to

defend or represent one accused of crime who announces his desire to plead guilty to the offense charged before trial: Com. ex rel. Curtis v. Ashe, 139 Superior Ct. 417; Com. ex rel. Campbell v. Ashe, 141 Superior Ct. 408."

The same case holds that a plea of guilty is not required to be *entered on* the indictment; although it does hold that it is better practice so to do, and that it is "desirable" for the defendant who signs the plea. In the case of Com. ex. rel. Campbell v. Ashe, 141 Superior Court, 408, at 411 the Court states:

"As the relator severally pleaded guilty to all the indictments, the Court was under no duty to appoint counsel to represent them. They knew whether or not they were guilty of the offenses charged. They do not, even in these proceedings, deny their guilt."

Commonwealth cites in the case of Com. ex. rel. Cohen v. Ashe, 123 Superior Court, 5, wherein the Court stated at page 8:

"The duty of the trial judge in the criminal case to inform a defendant, who appears without counsel, that he has a right to be heard by himself and his counsel and subpoena witnesses, who might testify for him, is not limited by the age or experience of the accused nor by the gravity of the offense; it applies with equal force to every defendant in a criminal prosecution who appears without counsel."

[fol. 15] Wherefore, the respondent prays your Honorable Court that his petition of Writ of Habeas Corpus be discharged.

And he will ever pray, etc.

Artemas C. Leslie, District Attorney, by Louis L. Kaufman, Esq.

[fols. 15a-17a] ORDER OF COURT

And now this 10th day of February, 1947, the within answer is directed to be filed nunc pro tunc as of Oct. 21, 1946.

(S.) By the Court, Rowand, P. J.

[fol. 18] IN THE SUPERIOR COURT OF PENNSYLVANIA, APRIL TERM, 1947

No. 148

No. 236

COMMONWEALTH OF PENNSYLVANIA ex rel. Elmer Uveges

v.

STANLEY P. ASHE, Warden, Western State Penitentiary, Pittsburgh, Pennsylvania

Appeal from Order of the Court of Common Pleas of Allegheny County, No. 3611 October Term, 1946

OPINION—Filed July 17, 1947

Opinion by RHODES, P. J.:

This is an appeal by relator from an order of the Court of Common Pleas of Allegheny County discharging rule and dismissing relator's petition for writ of habeas corpus.

On October 27, 1938, relator was sentenced by the Court of Oyer and Terminer of Allegheny County, on four district attorney's "indictments" (Nos. 81, 82, 83, and 84, October Term, 1938), charging burglary and receiving stolen goods, prepared under the Act of April 15, 1907, P. L. 62, 19 PS § 241, without presentation to the grand jury. Relator pleaded guilty in open court to the four bills; the pleas of guilty were endorsed on the indictments. The sentences imposed were from five to ten years on each bill of indictment, the same to run consecutively from April 15, 1938.

Relator, in his petition for writ of habeas corpus, set forth (1) that his signature does not appear on any of the indictments; and (2) that he was not accorded his constitutional [fol. 19] right to be represented by and have the advice of counsel at the time of his plea and sentences.

It does not appear that the relator signed the plea of guilty endorsed on the indictments, but in his petition he concedes having signed a paper which he believes to have been a waiver. His plea was entered and endorsed on each bill:

We have previously stated that the better practice in connection with a district attorney's bill under the Act of April

15, 1907, P. L. 62, as amended by the Act of June 15, 1939, P. L. 400, 19 PS § 241, is to have the defendant affix his signature or witnessed mark to the plea endorsed thereon. Com. ex rel. Mayernick v. Ashe, 139 Pa. Superior Ct. 421, 12 A. 2d 452; Com. ex rel. Banky v. Ashe, 142 Pa. Superior Ct. 396, 16 A. 2d 668; Com. ex rel. Slifko v. Ashe, 144 Pa. Superior Ct. 593, 20 A. 2d 799. See, also, form of endorsement suggested by the Supreme Court in Com. ex rel. Moore v. Ashe, 341 Pa. 555, 557, 19 A. 2d 734. But omission to have the bill signed by the defendant who entered the plea does not constitute a fatal defect, nullifying the sentence imposed thereon. Com. ex rel. Banky v. Ashe, supra, 142 Pa. Superior Ct. 396, 401, 16 A. 2d 668. Such a defect may be cured by subsequent proceedings in open court. It appears from the record that relator was there arraigned and pleaded guilty before Judge Frank P. Patterson; the record leaves no ground for uncertainty as to the crimes to which relator pleaded guilty in open court. Com. ex rel. Moore v. Ashe, supra, 341 Pa. 555, 560, 19 A. 2d 734.

In Com. ex rel. Dende v. Ashe, 144 Pa. Superior Ct. 598, 20 A. 2d 802, the validity of an indictment, closely analogous to those involved in the present case, was questioned. In that case, as in the one before us, the indictment had not been signed by the district attorney; the endorsements con- [fol. 20] taining the plea of guilty as provided by the Act of April 15, 1907, P. L. 62 (identical in form with the endorsement in the present case), were not signed by the defendants or attested by the clerk. The authentication appearing upon the indictment consisted of the initial of the judge who imposed the sentences, written beneath the sentences endorsed on the back of the indictment. We affirmed the orders of the court below refusing to discharge defendants on writs of habeas corpus, and remanding them to the custody of the warden of the penitentiary. In the present case the docket entries show that appellant pleaded guilty before Judge Patterson to the four bills on which he was sentenced, and in addition an application for clemency, addressed to the Board of Pardons and signed and sworn to by relator on February 8, 1946, indicates that he had a substantial understanding of the crimes charged, and contains no suggestion that he then considered himself innocent of any part thereof. In fact, relator does not now assert that he is innocent of all the crimes charged in the

indictments, or that he failed to understand the nature of the offenses to which he pleaded guilty. See Com. ex rel. Shaw v. Smith, 147 Pa. Superior Ct. 423, 425, 24 A. 2d 724. His present assertion that he intended to enter only a single plea of guilty and not separate pleas of guilty to each of the bills of indictment cannot be used to set aside the legal consequences of his recorded pleas. Com. ex rel. Kuklich v. Baldi, 150 Pa. Superior Ct. 390, 28 A. 2d 496. Moreover, he has not undertaken to specify to which of the offenses charged his plea of guilty was confined, and, in his petition for writ of habeas corpus, states that he "pleaded guilty before the Hon. Frank P. Patterson, trial judge, to four indictments charging burglary."

Relator's second contention is that he was not accorded his constitutional right to be represented by and have the [fol. 21] advice of counsel, that he was not advised by the court of this right, and that no offer was extended to supply counsel. In Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior Ct. 423, 24 A. 2d 724, the petition for the writ of habeas corpus set forth similar grounds for discharge. We there held that the relator was not deprived of any fundamental right guaranteed by the Constitution of this Commonwealth or by the Federal Constitution.

(1) Article 1, § 9, of the Pennsylvania Constitution, PS, guarantees to accused persons only the right to be "heard by counsel." Com. ex rel. McGlinn v. Smith, 344 Pa. 41, 48, 24 A. 2d 1.

(2) In capital crimes only, it is provided by statute that "learned counsel" shall be "assigned to the prisoners" upon all trials. Act of May 31, 1718, 1 Sm. L. 105, § 4, 19 PS § 783, and Act of March 22, 1907, P. L. 31, § 1, 19 PS § 784.

(3) Failure of the court to inquire whether the defendant desires counsel or to offer to appoint counsel in other than capital cases does not constitute the deprivation of a fundamental right guaranteed by the Constitution of this Commonwealth, where the defendant enters a plea of guilty either to a bill of indictment returned against him by the grand jury (Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior Ct. 423, 424, 24 A. 2d 724), or to a district attorney's bill prepared under the Act of April 15, 1907, P. L. 62, 19 PS § 241 (Com. ex rel. Slifko v. Ashe, supra, 144 Pa.

Superior Ct. 593, 595, 20 A. 2d 799; Com. ex rel. Withers v. Ashe, 350 Pa. 493, 495, 39 A. 2d 610).

(4) The sixth Amendment to the Federal Constitution giving to an accused in all criminal prosecutions the right to have the assistance of counsel for his defense applies only to trials in the Federal courts. Betts v. Brady, 316 U. S. 455, 461, 62 S. Ct. 1252, 86 L. Ed. 1595, 1601; Com. ex rel. McGlinn v. Smith, supra, 344 Pa. 41, 45, 24 A. 2d 1, 3.

[fol. 22] (5) The Fourteenth Amendment to the Federal Constitution relating to due process does not impose upon the states any uniform policy concerning representation by counsel in criminal cases; and it cannot be said that the amendment embodies an inexorable command that no trial for any offense, or in any court, would be fairly conducted and justice accorded a defendant who is not represented by counsel. Betts v. Brady, supra, 316 U. S. 455, 473, 62 S. Ct. 1252, 86 L. Ed. 1595, 1607; Com. ex rel. McGlinn v. Smith, supra, 344 Pa. 41, 49, 58; Com. ex rel. Shaw v. Smith, supra, 147 Pa. Superior 423, 433, 24 A. 2d 724; Mayo v. Wade, 5 Cir. 158 F. 2d 614. See also, Foster et al. v. Illinois, — U. S. —, — S. Ct. —, —L. Ed. —; Gayes v. New York, 331 U. S. —, — S. Ct. —, — L. Ed. —.

De Meerleer v. People of the State of Michigan, — U. S. —, — S. Ct. —, 91 L. Ed. 471, recently decided by the United States Supreme Court, to which reference is made by relator, is not applicable or controlling, as relator was not charged with a capital crime. It was there held that a seventeen-year-old defendant on trial for murder was deprived of his rights essential to a fair hearing under the Federal Constitution where at no time was assistance of counsel offered or mentioned to him, where he was never advised of his right to counsel, and where he was not apprised of the consequences of his plea.

Relator was not entirely ignorant of criminal procedure. In 1937 he had been arrested in Pittsburgh for burglary and larceny, and sent to Thorn Hill School where he was confined for ten months. This fact he admits in his application to the Board of Pardons, and it is not consistent with the statement in his brief as to his first appearance in criminal court.

Order is affirmed.

[fols. 23-29a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 30] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

Miscellaneous Docket No. 1482A

COMMONWEALTH OF PENNSYLVANIA ex rel. ELMER UVEGES,
Appellant,

vs.

STANLEY P. ASHE, Warden Western State Penitentiary, Pittsburgh, Pennsylvania

PETITION FOR ALLOWANCE OF APPEAL FROM ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA AT No. 148, APRIL TERM, 1947—Filed August 22, 1947

To the Honorable, the Chief Justice and Justices of said Court:

Petitioner, Elmer Uveges, respectfully informs this Court that his appeal made in the court below was founded on grave questions of constitutional rights, and of a nature to warrant a review of said court's order and judgment. He therefore prays that for reasons herein set forth, this petition be granted.

1. Appellant submits that the judgment of the court below is at variance with its own rulings in earlier cases holding a similar prayer, and contrary to rulings by the U. S. Supreme Court; in particular a quite recent one, viz., De Meerleer vs. Michigan, 67 U. S. 596, February 3, 1947.

2. An undue measure of weight is given to a presumption of guilt and punishment deserved, to the detriment of a fair consideration for the legal matter involved. In DeMeerleer vs. Michigan, supra, the question of guilt or innocence did not enter or receive attention from our highest court. Nor was it adversely considered in Com. vs. Valerio, 118 Pa. Superior Court 34, 178 A. 509 wherein the Court said: "While there may not have been much doubt as to the guilt of the defendant, yet his conviction should not be attended by a denial of constitutional rights guaranteed to every individual."

[fol. 31] 3. It is erroneously accepted by the court below without support, that a single plea of "guilty" in court was a "blanket plea" to more than one indictment, given without reservation with the full knowledge and consent of the defendant. This has been and is again denied. The record will disclose no waiver or agreement by which the defendant surrendered his right to answer severally to any and all indictments returned against him, for in no other procedure would he or the court know the exact nature of the charges contained therein, or "that the judgment shall be so certain as to enable him to plead it effectually to a subsequent prosecution for the same offense." (Com. ex rel. Fagan vs. Francis, 53 Pa. Super. Ct. 278, 279.) Nor does it appear that any waiver with-holding presentation to the Grand Jury the said four bills of indictment was signed, or a waiver of arraignment. The District Attorney in his Answer in the Court of Common Pleas denied that *any* waiver was signed. Therefore, under Rule 47 of this Court, all claims set forth in Appellant's Brief remaining unchallenged and not disputed may be construed as facts.

It was contended in the court below that where indictments were not read and pleaded to severally, each indictment should be endorsed with the signature of the defendant in order to meet explicitly the requirements of Act of April 15, 1907, P.L. 62, 19 P.S. sec. 241, unless by recorded waiver the right to plead severally is relinquished. In the instant case it appears that there was lacking not only the defendant's signatures, but those of the District Attorney and clerk as well, only the sentences being initialed by the judge. In this situation appellant cited Com. ex rel. Fagan vs. Francis, 53 Pa. Super. Ct. 278; Com. ex rel. Mayernick vs. Ashe, 139 Pa. Super Ct. 421, 12 A. 2d 452. The court recognized merit in the claim but declares: "Such a defect may be cured by subsequent proceedings in open court." A search of the record reveals no subsequent proceedings, beyond the single plea of guilty and sentences, sufficient to cure the defects in four indictments, nor is there any claim in the Opinion that there was a subsequent proceeding.

[fol. 32] 4. At page 3 the court states: ". . . relator does not now assert that he is innocent of all the crimes charged in the indictments." This is partly correct. But several times in his Brief, and especially at Summation he avers his innocence to all indictments save *one*. Again at

page 3: ". . . he has not undertaken to specify to which of the offenses charged his plea of guilty was confined." Because no indictment was read, such a feat is an impossibility.

5. In relation to the procedure as adopted in this case, appellant in the court below quoted excerpts from several rulings in support of his claims. (Com. ex rel. Fagan vs. Francis, supra; Com. ex rel. Mayernick vs. Ashe, supra; Com. ex rel. Penland vs. Ashe, 142 Pa. Superior Ct. 403, 19 A. 2d 464. There is no indication that they were accorded any consideration. Of those chosen by the court to support its judgment, one was prominently set forth as "closely analogous" to the instant case, to wit, Com. ex rel. Dende vs. Ashe, 144 Pa. Superior Ct. 598, 20 A. 2d 802. In said case only *one* bill of indictment was disputed, not *four*. Dende, one of the relators, was a well-educated adult, not a frightened seventeen-year-old boy. By his own signature he waived arraignment. There was no additional claim of lack of counsel. The analogy thus far appears to center on the absence of necessary signatures. At this point the court remarked: "Had the record ended there the relator's appeals would have had considerable merit," and cited specifically the cases of Fagan vs. Francis; Mayernick vs. Ashe, supra; and Penland vs. Ashe, supra. Thus, if the analogy be a true one, the court's remark appears well-fitted here. But here also all analogy ends.

In the Dende case there was a *subsequent* proceeding sufficient in the mind of the court for the cure of one faulty indictment. The defendants (4) readily admitted their guilt to the one charge, going so far as to describe the part each played in the commission of the robbery.
[fol. 33] Their *sworn testimony* and that of the complainant was *transcribed for the record*. And now since no such proceeding was had in the instant case, appellant respectfully submits that failure so to do constitutes error.

6. It is true that in February, 1946, an application to the Board of Pardons for clemency contains a statement, to wit, "The present conviction entails four burglaries." Within reason this Court might be asked to reject the implication assumed by the court below on the ground that in order to be self-sustaining, the authority and justification for a prison sentence must be before the sentencing court

and not predicated on a theory that these necessary elements may develop with the passage of years. However, it is felt that a true version of the matter is due this Court.

The Pardon Board demands that all applications for clemency be typewritten. Appellant owns no typewriter. Therefore the task must be assigned to someone who does. The prison records were used in formulating answers to questions asked because, whether rightly or wrongly, this is generally considered the wisest course toward favorable action. It must be remembered that appellant has not the training of a lawyer capable of foreseeing and avoiding complicated technicalities, and if the term—"The present conviction" appears ambiguous, the fault may lie in poorly chosen words.

Right to Counsel

Denial of appellant's claim to his constitutional right to have assistance of counsel is set forth in paragraphs numbered 1 to 5. For brevity and clarity reasons for review will use corresponding numbers.

[fol. 34] 1. More informative the quotation here reads: "In *all* criminal prosecutions the accused hath a right to be heard by himself *and* his counsel."

2 & 3. These two paragraphs distinguish between capital crimes and *all* criminal prosecutions. The Brief to the court below cites Com. ex rel. Otto Schultz vs. Herbert Smith, 139 Pa. Sup. 357. Schultz was charged with rape. In a lengthy opinion by the late Judge Keller, other cases were cited wherein the appellants were charged with crimes other than murder. Thus it appears that this appellant's claim in the court below should not have been denied because he was not charged with a capital crime. In the Schultz case, supra, Judge Keller wrote: "The purpose of the constitutional guaranty of a right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights, and the guaranty would be nullified by a determination that an accused's ignorant failure to claim his rights removes the protection of the Constitution."

4. Appellant believes that the recent unanimous ruling by the U. S. Supreme Court in DeMeerleer vs. Michigan,

67 U. S. 596, has modified the heretofore held precept that the Sixth Amendment to the Federal Constitution applies only to trials in Federal Courts. In that case the Michigan Supreme Court held that the Michigan rule was determinative. This was held to be error (see also Powell vs. Alabama, 287 U. S. 45, 68, 69). It is worthy of note that in Schultz vs. Smith, supra, the court cites Johnson vs. Zerbst, 304 U. S. 458, and from the repeated references to it, one might reasonably assume that it had a potent voice in the courts' deliberations. And this latter case was confined solely to Federal Courts.

5. Appellant does not presume to construe the Fourteenth Amendment. To him its simple terms promise that before the Bar of Justice all men meet on common ground, with special privilege or favored protection for none.

[fol. 35] It gives assurance, too, that this petition, crudely prepared by a layman who entered prison when scarcely seventeen, and submitted under a pauper's oath, will receive the same serious consideration as if it had been presented by the nation's most brilliant lawyer.

The court below has determined that because appellant was not charged with murder, the ruling in De Meerleer vs. Michigan, 67 U. S. 596, supra, "is not applicable or controlling." Respectfully submitted, this is error. To hold that only one accused of the most heinous of all crimes (murder) may find refuge and protection under the Constitution would tend not only to vitiate the farsighted idealism in the great minds which conceived the Fourteenth Amendment, but would transform it into an instrument worn out and abandoned because of age and ill use. Mr. Chief Justice Vinson in De Meerleer vs. Michigan, supra, did not restrict his words to murder alone when he said: "Here a seventeen-year-old defendant confronted by a serious and complicated criminal charge . . ."

It is respectfully submitted that never has there been an analogy more close than that which exists between the instant case and that of De Meerleer vs. Michigan extending even to the serious consequences to each. Since Michigan does not subscribe to capital punishment, De Meerleer received a life sentence. Appellant was given twenty to forty years. Who can say which boy would be the first to regain his liberty.

A final paragraph by the court below impugns a claim of "first appearance in criminal court," and that "he was not entirely ignorant of criminal procedure." It is true that appellant previously had been committed to Thorn Hill for the offense mentioned. But this was a commitment from Juvenile Court, from which experience he would hardly become familiar with criminal procedure. A seventeen-year-old boy in criminal court for the first time would more likely to be a fear-stricken creature trapped and at bay in hostile territory, surrounded by stern, unfamiliar faces.

[fol. 36] No friendly glance comes his way; no helping hand. Blindly subservient he follows the course demanded by the prosecuting official until too late he learns what his ignorance of "criminal procedure" has cost him.

Summation

In brief the three points of issue upon which appellant prays that his petition be granted are:

1. The aforementioned four "bills of indictment," bare of any signature, were instruments wi*ht*out any legal standing in law, because of their obvious failure to comply with Act of April 15, 1907, P. L. 62, 19 P. S. 241. Therefore it was improper for the court to exact a plea to either of them because they lacked legal value. To assume that legality was achieved by the court's endorsement of the sentences, *after judgment had been rendered* is contrary to the rule that legality must be present *before* judgement may be rendered.

2. The court below has not definitely ruled on the legality and authority for the use of a "blanket plea" without the consent, waiver or knowledge of the defendant.

3. The court below in denying appellant's right to counsel is in error.

Appellant therefore will ever pray, etc.

Respectfully submitted, Elmer Uveges, Appellant.

[fol. 37] *Duly sworn to by Elmer Uveges. Jurat omitted in printing.*

[fols. 38-42] IN THE SUPREME COURT OF PENNSYLVANIA, WESTERN DISTRICT

[Title omitted]

Petition

To the Honorable, the Chief Justice and Justices of said Court.

Before me, a notary public, in and for said County of Allegheny, Commonwealth of Pennsylvania, personally appears Elmer Uveges who, being duly sworn according to law, on oath deposes and says he is a citizen of these United States and a pauper, without funds of any kind with which to secure counsel to commence, prosecute and defend to conclusion his grievances set forth in his appeal from order of the Superior Court of Pennsylvania No. 148, filed July 17, 1947, said appeal being true and correct to the best of his knowledge and belief. This appeal is not instituted for the purpose of delay, but solely because appellant believes justice requires it.

Respectfully submitted, Elmer Uveges, Appellant.

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss.:

Subscribed and sworn to this 20th day of August, 1947.
R. C. Wieseckel, Notary Public. (Seal.)

My Commission expires May 1, 1948.

Elmer Uveges, Appellant.

[fols. 42a-46a] [Endorsed:] No. 1482A. Pa. 358. Miscellaneous Docket. Commonwealth of Pa. ex rel. Elmer Uveges, Apt. v. Stanley P. Ashe, Warden, etc. Petition for allowance of Appeal. Order. September 29, 1947. Petition Denied. Per Curiam. Filed Aug. 22, 1947. Supreme Court, Western District. Service accepted this 22 August, 1948. George F. A. Langfitt, 1st Asst. D. A.

[fol. 47] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. 75

ELMER UVEGES

vs.

COMMONWEALTH OF PENNSYLVANIA

STIPULATION AS TO INDICTMENTS

It is hereby stipulated and agreed by and between counsel for appellant, Albert A. Fiok and counsel for appellee, William S. Rahauser, District Attorney of Allegheny County, Pennsylvania, that indictments numbered 81, 82, 83, 84, 85, 86, 87 and 93, October Sessions, 1938 of the Court of Oyer and Terminer, Allegheny County, Pennsylvania and No. 741, October Sessions, 1938 for the Court of Quarter Sessions for the Peace of Allegheny County, Pennsylvania are all of the indictments against the appellant and that said indictments are included in the record for purposes of this appeal.

(S.) William S. Rahauser, Albert A. Fiok.

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 193 8.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the C[illegible]y, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim, and Elmer Uveges

late of the County aforesaid, on the **first** day of **September** in the year of our Lord, one thousand nine hundred and **thirty-eight** about the hour of eleven in the night of the same day, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Abraham Falk

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and property of the said **Abraham Falk** in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and

one purse of the value of five dollars;
the sum of five dollars, lawful money of the Government of the United States;
one wallet of the value of three dollars and fifty cents,

late of the County aforesaid, on the **first**
day of **September** in the year of our Lord, one thousand nine hundred
and **thirty-eight** about the hour of eleven in the night of the same day, at the County aforesaid,
and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Abraham Falk

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and
property of the said **Abraham Falk**
in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take
and carry away, and

one purse of the value of five dollars;
the sum of five dollars, lawful money of the Government of the United States;
one wallet of the value of three dollars and fifty cents,

of the goods, chattels, and property of the said **Abraham Falk**

then and there being found, then and there feloniously
and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly
in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

24

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then an[illegible]ere, well knowing the goods, , chattels
and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Walter C. Monaghan

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 193 8.

ALLEGHENY COUNTY, SS.

The Grand Inqurst of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim, and
Elmer Uveges

late of the County aforesaid, on the thirty-first
day of August in the year of our Lord, one thousand nine hundred
and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid,
and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

W. M; Price

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and
property of the said W. M. Price
in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take
and carry away, and

one platinum ring of the value of five hundred dollars;
one wrist watch of the value of one hundred and fifty dollars;
one ladies purse of the value of five dollars;
one fraternity pin of the value of seventy-five dollars;
the sum of twenty-four dollars, lawful money of the Government of
the United States,

26

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, , chattels
and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Peter J. Leheny

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

6273

Attempt - O & I

No. 82

October Sessions 193 8

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges.

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Peter J. Leheny

On 193

TRUE BILL

Foreman

And now OCT 27 1938 193 , de-
fendant having been arraigned with
the assistance of counsel and having
pleaded guilty to the charge of 193
The Defendant
pleaded guilty thereto,
which plea is entered at request
As to each Defendant

L

D-13

596

And now OCT 27 1938 19

Defendant sentenced to pay a fine of 6¼ cents to the Commonwealth, Pay costs of prosecution, and undergo an imprisonment at separate and solitary confinement at labor of not less than five years or more than Ten years in the Western Penitentiary and stand committed As to each Defendant This Sentence to begin and take effect at the expiration of Sentence imposed at No 81 October 1938.

As to each Defendant

By The Court

49a

No. 81

October Sessions, 193 8.

Commonwealth

vs.

Mark McKim, alias Gustave McKi
and Elmer Wages

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Walter G. Monaghan

On 193

TRUE BILL FILE

And now OCT 27 1938 193 , defendant ~~having been charged with~~ the offence herein set forth and having notified the District Attorney of 193 ~~his~~ willingness to enter a plea of guilty ~~the Defendant~~ ment having been there- ~~appointed~~ defendant after read- ~~ing~~ plead guilty thereto ~~which~~ plea is entered at ~~his~~ request.

As to each Defendant

And now OCT 27 1938 19

Defendant sentenced to pay a fine of $1/4 cents to the Commonwealth, Pay costs of prosecution and undergo an imprisonment at solitary and separate confinement at labor of not less than five years or more than Ten years in the Western Penitentiary and stand committed This sentence to be computed from date of commitment to wit October 15th, 1935. As to each Defendant

By the Court

P

48a

L 596

of the goods; chattels, and property of the said W. M. Price

then and there being found, then and there feloniously and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 193 8.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim,
and Elmer Uveges

late of the County aforesaid, on the fifteenth day of July in the year of our Lord, one thousand nine hundred and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Arthur A. Lawrence

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and property of the said Arthur A. Lawrence

in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and

one gold pocket watch of the value of thirty dollars;
one diamond ring of the value of two hundred and fifty dollars;
one gold wrist watch of the value of thirty dollars;
one gold watch of the value of forty dollars;
the sum of fifty cents, lawful money of the Government of the United States,

28

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, chattels and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Peter J. Leheny

SWORN BY ME

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

FOREMAN

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 1938.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

late of the County aforesaid, on the sixteenth day of September in the year of our Lord, one thousand nine hundred and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

J. R. Lloyd

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and property of the said J. R. Lloyd in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take and carry away, and

two gent's hats of the value of twelve dollars and fifty cents each,
one platinum wedding ring of the value of fifty dollars,
one gent's watch of the value of fifty dollars,
the sum of fifty-two dollars, lawful money of the Government of the United States,

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, , chattels and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Ward C. Sanders

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

Form 9. District Attorney.

IN THE
Court of Oyer and Terminer and General Jail Delivery
For the County of Allegheny

Of October *Sessions, A. D. 193*8.

Allegheny County, ss.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

late of the County aforesaid on the twenty-sixth day of September in the year of our Lord one thousand nine hundred and thirty-six in the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS and on divers other days and dates, in the night time feloniously and burglariously did break and enter the dwelling houses of J. C. Weir, James Bowman, W. York Cockene, T. H. Bloom, Adolph Klein, Samuel Frankel, J. R. Lloyd, Mrs. J. P. Rogers, and the building of Scarborough and Klaus, with intent to commit a felony,

6272 O & T (32) (52a)

No. 85

October Sessions, 1938.

Commonwealth

VS.

Mark McKim, alias
Gustave McKim and
Elmer Uveges

INDICTMENT:

Burglary

Prosecutor

Ward C. Sanders

On 193

TRUE BILL.

..... Foreman.

..... 193

The Defendant, OCT 27 1938 193, defendant having been charged with the offence herein set forth and having conferred the District Attorney of ... his consents to enter a plea of guilty to this indictment hereby, been thereupon requested defendant after reading same do plead guilty thereto, which plea is entered at request.

As to each Defendant

Ep die. Above Certified to Court over & turned for trial & disposition.

OCT 27 1938 19..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 8-12-13-14 Oct 1938

As to each Defendant

To the Court

6273

No. 83

October Sessions, 1938

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Peter J. Lahany

On ..... 193 .....

TRUE BILL

FILE

And now OCT 27 1938 193 , defendant having been charged with the offence herein set forth and having notified the District Attorney of 193 within ~~mess~~ to enter a plea of guilty and The Defendant ~~ment~~ having been thereupon prepared defendant after reading same do plead guilty thereto, which plea is entered at request

As to each Defendant

L

D-17

578

And now OCT 27 1938 19

Defendant sentenced to pay a fine of 6 1/4 cents to the Commonwealth, Pay costs of prosecution; and undergo an imprisonment at separate and solitary confinement at labor of not less than ~~five~~ years or more than ten years in the Western Penitentiary and stand committed As to each Defendant This sentence to begin and take effect at the expiration of sentence imposed at No 82 October 1938

As to each Defendant

By The Court

P

50a

of the moneys, goods, chattels, and property of the said J. R. Lloyd

then and there being found, then and there feloniously and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

[redacted] 19 ... sentence
[redacted] payment of costs of
[redacted] court by reason of
[redacted] 19 ...

And now OCT 27 1938 19 ...
Defendant sentenced to pay a fine of 6¼ cents to the Commonwealth, Pay costs of prosecution; and undergo an imprisonment in separate and solitary confinement at labor of not less than five years or more than ten years in the Western Penitentiary and stand committed As to each Defendant This Sentence to begin and take effect the expiration of Sentence imposed at No. 83 October 1938.
As to each Defendant
By The Court
...P

51a

8272

No. 84

October Sessions 1938.

Commonwealth

vs.

Mark McKim, alias
Gustave McKim, and
Elmer Uveges

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Ward C. Sanders

On ... 193...

TRUE BILL

And now OCT 27 1938 193..., defendant ... charged with the offence ... Pleads ... Plea ... noted ... will ... and ... upon ... ing same ... which plea ... at ...

The Defendant ... been thereupon ... guilty thereto

As to each Defendant

10-13
5-16
M

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Ward C. Sanders

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME,

FOREMAN

52

31

of the goods; chattels, and property of the said **Arthur A. Lawrence**

then and there being found, then and there feloniously and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

27

50

D. A. Indictment. Form 37

In the Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October Sessions, A. D. 1938.

ALLEGHENY COUNTY, SS.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

34

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

afterwards to wit: on the same day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, the goods,
chattels and property aforesaid, by some person whose name is to said Inquest unknown then lately before feloniously stolen, taken and carried away, unlawfully, unjustly and for the sake of wicked gain, feloniously did receive and have (the said

then and there, well knowing the goods, , chattels
and property last mentioned, to have been feloniously stolen, taken and carried away)
contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Walter C. Monaghan

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME

FOREMAN

Form 9. District Attorney.

IN THE

Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October *Sessions, A. D. 193*8.

Allegheny County, ss.

The Grand Inquest *of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That*

Mark McKim, otherwise called Gustave McKim and Elmer Uveges

late of the County aforesaid on the twenty-sixth

day of August in the year of our Lord one thousand nine hundred

and thirty-eight in the County aforesaid, and within the jurisdiction of this Court, with

FORCE AND ARMS and on divers othere days and dates, in the night time feloniously and burglariously did break and enter the dwelling houses of Anthony Ortenzo, R. F. Mehl, and Mrs. James Martin, with intent to commit a felony,

late of the County aforesaid, on the third
day of September in the year of our Lord, one thousand nine hundred
and thirty-eight about the hour of eleven in the night of the same day, at the County aforesaid,
and within the jurisdiction of this Court, with FORCE AND ARMS, the dwelling house of

Homer A. Smith

there situate, feloniously and burglariously did break and enter, with intent the goods, chattels, moneys and
property of the said Homer A. Smith
in the said dwelling house then and there being, then and there feloniously and burglariously to steal, take
and carry away, and
a certain amount of old coins a more particular description of which is
to this Inquest unknown and being of the value of two hundred dollars,

of the goods, chattels, and property of the said Homer A. Smith

then and there being found, then and there feloniously
and burglariously did steal, take and carry away, contrary to the form of the Act of the General Assembly
in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

6270

OCT 27 1938

.....19..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 11-12-13-14 Oct 1938

As to each Defendant

By The Court.

Feltman

No. 57 & 57

.....October..... Sessions, 193 8.

296/140

Commonwealth

VS.

Mark McKim, alias
Gustave McKim, and
Elmer Uveges

INDICTMENT:

Burglary

Prosecutor.

.....Walter C. Monaghan.....

On.....193

TRUE BILL.

FILE

.....Foreman.

And now OCT 27 1938 193 193, defendant having been charged with the offence herein set forth and having [illegible] upon [illegible] other pending [illegible] which [illegible] request.

The Defendant

As to each Defendant

D 13

M.697

(P. 36)

(54A)

6270

No. 86

October Sessions, 193 8.

Commonwealth

vs.

Mark McKim, alias
Gustave McKim, and
Elmer Uveges

INDICTMENT:

FIRST COUNT:

BURGLARY

SECOND COUNT:

RECEIVING STOLEN GOODS

Prosecutor

Walter C. Monaghan

On 193

TRUE BILL

FILED

Foreman.

And now OCT 27 1938 193 defendant having been charged with the offence herein set forth and having notified the District Attorney of 193 willingness to enter a plea of guilty and this indictment having been thereupon prepared defendant after reading same do plead guilty thereto which plea is entered at request.

The Defendant

As to each Defendant

D-13

M 597

OCT 27 1938 19 sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 81-82-83-84 Oct. 1938

As to each Defendant

By The Court

53a

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Walter C. Monaghan

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME,

FOREMAN

Form 8. District Attorney.

D

IN THE
Court of Oyer and Terminer and General Jail Delivery

For the County of Allegheny

Of October *Sessions, A. D. 193*8.

Allegheny County, ss.

The Grand Inquest of the Commonwealth of Pennsylvania, now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That

Mark McKim, otherwise called Gustave McKim, and Elmer Uveges

late of the County aforesaid on the **seventh**

day of **July** in the year of our Lord one thousand nine hundred

and **thirty-eight** in the County aforesaid, and within the jurisdiction of this Court, with

FORCE AND ARMS **and on divers other days and dates unlawfully and feloniously in the night time did then and there burglariously break and enter the dwelling houses of R. Q. Cleavenger; T. Pearlman; J. Sodzik; W. Black; L. J. Rosenfield; M. Kaufmann; J. Gootlieb; A. Cooper; L. Gordon; B. P. Lazar; Ruben Felman; H. R. Sauers; A. S. Goorin; T. J. Lerner; W. McCann; E. Belle; J. H. Dice; C. Benjamin; F. C. Hoffman; J. M. Yenias; H. Schwartz; J. F. Cohen; M. Watchel; R. P. Middleton; R. Solomon; M. J. Goodman; Lena Woolhandler; Joseph Levandowski; Julius Goldberg; Y. Kridky; Jacob Richman; Mrs. Max Schoen; and Julius Goldstein; with intent in them, the said Mark McKim, otherwise called Gustave McKimm, and Elmer Uveges, the goods, moneys, chattels and property in the said dwelling houses as aforesaid then and there being found, then and there to feloniously take, steal and carry away,**

OCT 27 1938

.....19 ..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No 8-12-13-14 Oct 1938

As to each Defendant

By The Court

P

6273

No. 93

October Sessions, 1938

Commonwealth

VS.

Mark McKim, alias Gustave McKim; and Elmer Uveges

INDICTMENT:

BURGLARY

Prosecutor

Peter J. Leheny

On 193

TRUE BILL.

D. A. Indictment Form 17

IN THE

Court of Quarter Sessions of the Peace

FOR ALLEGHENY COUNTY.

Of October *Sessions, 1938.*

Allegheny County, ss:

The Grand Inquest *of the Commonwealth of Pennsylvania now inquiring in and for the body of the County of Allegheny, upon their oaths and solemn affirmations, respectively, DO PRESENT, That*

Mark McKim, otherwise called Gustave McKim, and Elmer Uveges

late of the County aforesaid, on the **ninth** day of **September** in the year of our Lord one thousand nine hundred and **thirty-eight**, in the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, in and upon one **Wilma Harris** in the peace of God and of this Commonwealth, then and there being, feloniously did make an assault, and with a certain loaded **revolver** which he, the said **Mark McKim, otherwise called Gustave Mc Kim, and Elmer Uveges** in his right hand then and there had and held, did then and there feloniously shoot off and discharge at the person of the said **Wilma Harris**

with intent, **her** the said **Wilma Harris**

wise called Gustave Mc Kim, and Elmer Uveges in his right hand then and there had and held, did then and there feloniously shoot off and discharge at the person of the said **Wilma Harris**

with intent, **her** the said **Wilma Harris**

then and there feloniously to kill and murder, contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

AND THE INQUEST AFORESAID, upon their oaths and solemn affirmations aforesaid, DO FURTHER PRESENT, That the said

on the day and year aforesaid, at the County aforesaid, and within the jurisdiction of this Court, with FORCE AND ARMS, unlawfully did, playfully and wantonly, point and discharge a certain loaded at the person of

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.
Walter C. Monaghan

District Attorney for Allegheny County

Sworn by me.

Foreman

'56

63

contrary to the form of the Act of the General Assembly in such case made and provided, and against the peace and dignity of the Commonwealth of Pennsylvania.

Test Pro. Respub.

Peter J. Leheny

DISTRICT ATTORNEY FOR ALLEGHENY COUNTY

SWORN BY ME,

FOREMAN

[redacted]

INDICTMENT:

BURGLARY

Prosecutor

Peter J. Lohany

On 193

TRUE BILL.

..... Foreman.

OCT 27 1933

And now ..... 193 ..... 193, defendant. The Defendant having been charged with the offence herein set forth and having notified the District Attorney of willingness to enter a plea of guilty and this indictment having been thereupon prepared defendant after reading same do ..... plead guilty thereto, which plea is entered at ..... request

D-13

L

As to each Defendant 599

OCT 27 1938 19..... sentence suspended on payment of costs of prosecution by county by reason of Sentence at No. 81-82-83-84 Dec. Sess. 1938
As to each Defendant

By The Court

6271

No.

741 October Session, 1938.

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges

INDICTMENT:

First Count—Felonious Assault.

Second Count—Pointing Firearms.

Prosecutor

Walter C. Monaghan

On ..... 192..

TRUE BILL.

Eo. die. Alias Certified to Court

FILED

Commonwealth

vs.

Mark McKim, alias Gustave McKim and Elmer Uveges

INDICTMENT:

First Count—Felonious Assault.

Second Count—Pointing Firearms.

Prosecutor

Walter C. Monaghan

On ..... 192..

TRUE BILL.

Eo. die. Alias Certified to Court

FILED

Over & Terminer for trial and disposition.

Foreman

..... 192....

The Defendant

And now OCT 27 1938 193..., defendant having been charged with the offence herein set forth and having notified the District Attorney of willingness to enter a plea of guilty and this indictment having been thereupon prepared defendant after reading same do plead guilty thereto which plea is entered at request.

As to each Defendant

[fol. 57] IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1948

No. 75

ELMER UVEGES

vs.

COMMONWEALTH OF PENNSYLVANIA

STIPULATION IN RE TESTIMONY

It is hereby stipulated and agreed between counsel for Appellant, Albert A. Fiok, and counsel for Appellee, William S. Rahauser, District Attorney for Allegheny County, Pennsylvania, as follows:

1st. That Exhibit "A" attached hereto and made a part hereof and designated "Stenographer's Notes" contains the entire account of the hearing in the Court of Oyer and Terminer, Allegheny County, Pennsylvania, resulting in the conviction of Elmer Uveges, Appellant herein.

2nd. That said notes are abbreviated and are not and do not purport to be a complete word for word transcript of the unsworn testimony taken at said hearing.

3rd. That said notes, while strictly not a part of the record, are included for the purpose of this appeal since it is believed that they will aid this Court in understanding the nature and extent of the aforesaid original hearing.

Albert A. Fiok, Attorney for Appellant; William S. Rahauser, District Attorney for Allegheny County, Pennsylvania, Attorney for Appellee.

Dated September 13, 1948.

[fol. 58] EXHIBIT "A" STENOGRAPHER'S NOTES

Narrative Transcript of Plea
Judge's File No. 60

Date 10/27/38

No. 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 93 and 741 Oct. 1938.

Name Mark McKim alias Gustave McKin and Elmer Uvages.

Charge: See Below.

Judge Patterson, Dist. Att'y Langfitt.

Sentence: Both defendants sentenced to the Western Penitentiary for the period of not less than 5 nor more than 10 years at No. 81 Oct. 1938. Same sentence at No. 82 Oct. 1938 to begin at the expiration of sentence at No. 81 Oct. 1938. Same sentence at No. 83 Oct. 1938 to begin at the expiration of sentence at No. 82 Oct. 1938. Same sentence at No. 84 Oct. 1938 to begin at the expiration of sentence at No. 83 Oct. 1938.

Sentence in other cases suspended by reason of the above.

Mr. Langfitt: There are a total of 67 charges of burglary against these men, 7 charges of Violations of the Firearms Act, 2 charges of Pointing Firearms and one charge of Felonious Assault. Of the 67 cases of Burglary, 13 were committed by McKim alone and the balance by the two defendants acting together. Because of the great number of cases involved, a number of them have been grouped together under one indictment. At No. 81 the defendants are charged with entering the dwelling house of Abraham Falk on Sept. 1st, 1938 and taking one purse of the value of $5, the sum of $5 in cash and one wallet of the value of $3.50. At No. 82 the defendants are charged with entering the dwelling house of W. H. Pride on August 31, 1938 and taking 1 platinum ring of the value of $500, one wrist watch of the value of $150, one ladies purse of the value of $5, one fraternity pin of the value of $75 and the sum of $24 in cash. At No. 83 the defendants are charged with entering the dwelling house of Arthur A. Lawrence and taking one gold watch of the value of $30, one diamond ring of the value of $250, one gold wrist watch of the value of $30, one gold watch of the value of $40 and the sum of 50@ in cash. At No. 84 the defendants are charged with entering the dwelling house of J. R. Lloyd and taking therefrom two hats of the value of $12.50 each, one platinum wedding ring of the value $50, and the sum of $52 in cash. At No. 86 both defendants are charged with entering the dwelling house of Homer A. Smith and taking $200 in old coins, At No. 88 McKim is charged with entering the home of William Spinilli and taking the sum of $125, one revolver of the value of $30. At No. 90 McKim is charged with entering the dwelling of C. J. Seaman and taking one ladies diamond heirloom of the value of $1500, one gold coat ring of the value of $50, one gentlemen's yellow gold ring of the value of $20 and an assortment of old coins of the value of $20. At No. 741 October, 1938 the defendants are charged with

Felonious Assault on the person of Wilma Harris. The defendants admit the various charges set forth in the informations that have been filed.

Officer Cavanaugh: The only thing I know, we were getting calls about a series of robberies of these houses in the Squirrel Hill District. Our district runs from Forbes street over and the biggest part of these were supposed to have been committed on the other side of Forbes St. We got a call one night on the last house they got into on Bellrock St. and from information received located where the two defendants had been rooming on Howe St. Two days later we got a call to Scarborough and Grouse St. and when we got there we caught McKim and the other boy got away. We caught Uveges later in the vicinity of Howe St.

Mr. Langfitt: How did they get in these places?

Officer Cavanaugh: They would use a glass cutter and in this way get at the lock.

[fol. 59] Mr. Langfitt: Was this always in the night time?

Officer: No.

Mr. Langfitt: Were the people whose homes were entered at the- home when the- got in?

Officer: Not generally.

Mr. Langfitt: Did you recover most of the loot?

Officer: The biggest part of it in McKim's room.

Mr. Langfitt: Over what period of time were the entries made?

Officer: Between 2 and 2½ months.

Mr. Langfitt: Are you one of the parties whose home was entered?

Mrs. Price: Yes.

Mr. Langfitt: Just tell what happened there.

Mrs. Price: We *We* were sitting in the living room one evening. The windows in the rear of the house were locked and screened. We did not hear anything but later when I went back to look for my purse, I discovered all of the drawers had been pulled out and their contents on the floor or badly mussed up. We then discovered that whoever had come in had removed the screen and opened the latch on the window in some manner. I could not find my purse and then discovered that it was gone.

Mr. Langfitt: Did you see either of the defendants?

Mrs. Price: No, but now I recognize this boy (indicating McKim) as one whom I had seen loafing around the house later in the day.

Mr. Langfitt. Do you want to hear anything else Your Honor?

The Court: I want to hear about this charge of Felonious Assault.

Mrs. Wilma Harris, 945 Flemington Ave., Pittsburgh: It was around 2:45 in the morning of Sep. 9th. I thought I heard someone coming into my bedroom. I was awake at the time and I turned my head over so slightly and asked who was there. I did not get any answer and whoever it was went back down the hall. I then asked who was there again and when I said this someone said, "Shut up, if you don't shut up I will -et you have it". With that whoever it was shot and then my husband got up and they ran.

McKim: Age 17. States he has no home but that his mother lives at 363 South Negley Ave. Father died when he was very young. Sent to Orphans' home but released from there at the age of 11 and turned over to the Juvenile Court then sent to Rosedale where he stayed for two yrs. and was then placed by the Court with a family in Hazelwood. While in Hazelwood states he got in with the gang of 5 or 6 other boys [that]* and that they got into trouble for stealing cars. When released on that charge he was turned back to the Juvenile Court and the Court then placed him with a family in Squirrel Hill. States he knew something about stealing from his experience in *a* Hazelwood and after that just kept it up.. Met Uveges while a student at the Gladstone High School where he went as far as the 10th Grade. Upon returning to Pittsburgh Uveges started to live with him. Admits that the two of them had been entering these homes for a period of 3 months and that on the night they entered the Harris home both had guns which they had picked up from other houses they had entered. Admits that he fired all the cartridges from his gun on that occasion but claims that they did not always carry guns with them when the- entered other dwellings. States that they disposed of some of the things they had taken for old gold but retained most of the jewelry.

Uveges: Ages 17. Residence, Georgekay Road, Hazelwood. Lives [tih] with mother, father dead. Attended school until he reached the 10th grade. Has never worked at a steady job. Sent to Thorn Hill by the Juvenile Court and

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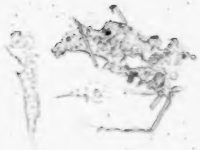
* Matter inclosed in brackets struck-out in copy.



released from that institution 5 months ago. States he and McKim began to enter dwellings on August 16, 1938.

[fol. 60] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 201, Misc.

On petition for writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; GRANTING PETITION FOR CERTIORARI ETC.—June 7, 1948

On consideration of the motion for leave to proceed herein in *forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 844.

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FILED
OCT 16 1948
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 75 75

ELMER UVEGES,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA, STANLEY P. ASHE, WARDEN, WESTERN STATE PENITENTIARY,

Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA

BRIEF FOR THE PETITIONER

ALBERT A. FIOK,
Counsel for Petitioner.

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Cases:

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Com. ex rel. Deide v. *Ashe*, 144 Pa. Super. Ct. 598, 20 A. 2d 802 12
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 75

ELMER UVEGES,

Petitioner,

vs.

COMMONWEALTH OF PENNSYLVANIA, STANLEY P. ASHE, WARDEN, WESTERN STATE PENITENTIARY,

Respondent.

BRIEF FOR THE PETITIONER

Opinion Below

1. The Supreme Court of Pennsylvania did not file an opinion.

2. The Superior Court of Pennsylvania filed an opinion (R. 18), reported in 161 Pa. Super. Ct. 58, 53 A. 2d 894.

Jurisdiction

Petitioner contends that his confinement in the Western State Penitentiary is a deprivation of liberty without due process of law in violation of the Fourteenth Amendment of the Constitution. The Supreme Court of Pennsylvania is the highest Court of the Commonwealth in which a decision could be had. Its final order on the petition for a writ of

habeas corpus was entered on September 29, 1947 (R. 21). Petitioner's motion for leave to proceed *in forma pauperis* and his petition for certiorari were filed in December 1, 1947, and granted June 7, 1948 (R. 45). The jurisdiction of this Court is based upon Section 237 (b) of the Judicial Code as amended by the Act of June 25, 1948.

Question Presented

Whether the action of the Pennsylvania authorities in holding petitioner incommunicado for almost two weeks between his arrest and trial, a long term of imprisonment on indictments illegally prepared, without benefit of counsel or explanation of the charges against him, met the fundamental standards of fairness and decency imposed by the Fourteenth Amendment of the United States Constitution.

Statement of the Case

On October 4, 1938, the petitioner, then a boy seventeen years of age, was arrested by a member of the Pittsburgh, Pennsylvania police ostensibly for the purpose of questioning and investigation. During the ensuing period of almost two weeks, he, with another young boy, was shunted from one police station to another and to the Allegheny County Detective Bureau without an opportunity to contact his family or friends. He was finally committed to Allegheny County Jail, and, two days before the date of sentencing, he was called before an Assistant District Attorney for an interview. At this interview he made known his desire to have representation and advice of counsel before committing himself to any arrangement concerning his plea. The answer was a threat that if the Commonwealth was put to the expense of a trial, a sentence of not less than twenty years was certain to follow; but if the Petitioner should agree to plead guilty, the court would be persuaded to commit him

to Huntingdon Reformatory because of his youth, where a parole might be earned within two years. With no one to advise him, completely ignorant of his rights, scared and bewildered, and relying upon the representations of the Assistant District Attorney, the Petitioner, along with the other youth, verbally agreed to enter a plea of guilty to one charge of burglary.

The District Attorney prepared nine District Attorney's "indictments" under the Act of April 15, 1907, P. L. 62, 19 P. S. Sec. 241, without presentation to the grand jury. None was signed by the District Attorney as required under the Act of May 3, 1850, P. L. 654, 16 P. S. Sec. 3431, and the Act of March 31, 1860, P. L. 427, 19 P. S. Sec. 262. A plea of guilty was rubber stamped on each indictment but none was signed by the Petitioner as required under the interpretation of the Act of April 15, 1907, P. L. 62, in effect at that time. None was shown to Petitioner at any time.

On October 27, 1938, the Petitioner, along with another youth of the same age, appeared before the court. Although the record does not indicate, Petitioner was asked by the prosecuting official if his plea was guilty, to which he answered, "yes." Although apparent that he was not represented by counsel, the court made no inquiry as to whether the Petitioner desired counsel to represent him, or whether he understood the consequences of his plea. Without the indictments being read to him, the court proceeded to sentence him on four District Attorney's "indictments", charging burglary and receiving stolen goods from five to ten years on each bill of indictment, the same to run consecutively from October 15, 1938, for a total of twenty to forty years. Sentence on the other indictments was suspended.

On October 1, 1946, Petitioner filed an application for a writ of *habeas corpus* (R. 4-6) in the Court of Common Pleas of Allegheny County in which he described the foregoing events somewhat inexpertly. On January 20, 1947,

in an opinion and order the writ was denied (R. 7-8). On February 11, 1947, the District Attorney filed an answer (R. 9-10), a copy of which was not served to Petitioner, in which the contentions of the Petitioner were in substance either admitted or not denied. On February 1, 1947, an appeal to the Superior Court of Pennsylvania was filed and the opinion affirming the court below was filed July 17, 1947. On August 22, 1947, petition for allowance of appeal to the Supreme Court of Pennsylvania was filed (R. 15-21), and on September 29, 1947, the petition was denied (R. 21). Upon filing a petition for writ of certiorari, this Court granted Petitioner's motion for leave to proceed *in forma pauperis* and allowed the writ of certiorari on June 7, 1948 (R. 45).

Although *habeas corpus* may not be used as a substitute for an appeal, it is the proper remedy under Pennsylvania law for attacking a sentence passed in violation of fundamental constitutional rights. *Commonwealth ex rel. Schultz* v. *Smith*, 139 Pa. Super. 357; *Commonwealth ex rel. Penland* v. *Ashe*, 341 Pa. 337; *Commonwealth ex rel. McGlinn* v. *Smith*, 344 Pa. 41. From the beginning to the present, there is no suggestion that the petition was procedurally deficient in the instant case. The conclusion is inescapable, therefore, that the Supreme Court of Pennsylvania ruled on the Federal question raised by the application for *habeas corpus*. The petition for certiorari, therefore, brings Petitioner's claim properly before the Court.

Specification of Errors to Be Urged

The Supreme Court of Pennsylvania erred:

1. In failing to hold that under the circumstances set forth in the petition for *habeas corpus*, Petitioner was constitutionally entitled to the assignment or advice of counsel.

2. In failing to hold that under the circumstances set

forth, Petitioner was sentenced without due process of law and in violation of the Fourteenth Amendment of the United States Constitution.

3. In denying the petition for *habeas corpus*.

Summary of Argument

Petitioner was indicted, arraigned and sentenced without due process of law. The record shows that Petitioner, on trial for serious crimes, was not given any assistance from counsel, offered the assistance of counsel, or even advised of his right to the assistance of counsel. Even the sentencing court failed in its duty to inquire whether or not Petitioner fully understood the nature of the charges against him and the full consequences of his plea. Due process of law requires a fair opportunity to answer an accusation understandingly, and when the charges are numerous and serious and the potential issues too complex for a youthful layman to comprehend, the Commonwealth must offer counsel to a defendant, not otherwise protected, at all stages of the proceeding against him. *DeMeerleer* v. *Michigan*, 329 U. S. 663; *Rice* v. *Olson*, 324 U. S. 786; *Williams* v. *Kaiser*, 323 U. S. 471; *Wade* v. *Mayo*, 334 U. S. 672.

Where a man, charged with a series of serious crimes, is shunted from police station to police station, finally lodged in jail and kept there, and is brought into court and rushed right through to sentence without benefit of counsel, he certainly does not get a fair trial. Here the charges were numerous and too complex for Petitioner as a layman to understand the different accusations, discriminate between them, appraise the possible defenses, and then reach an intelligent judgment concerning his guilt or innocence.

The District Attorney, in preparing the various indictments against Petitioner, disregarded the mandates of the statutes and judicial opinions to the detriment of the Peti-

tioner and in violations of due process. The fundamental unfairness of the proceeding was further aggravated by the action of the prosecuting officials in holding Petitioner unlawfully, without opportunity of seeking advice or to contact his family or friends, and without bringing him before a magistrate for almost two weeks, the entrapment resorted to by the Assistant District Attorney in obtaining a plea, and the subsequent misinformation presented to the sentencing judge. The bewilderment and despair engendered by this mistreatment would have destroyed whatever opportunity he might otherwise have had to prepare an understanding answer to the accusations against him.

The trial court, in addition to the failure to assure Petitioner the substance of a hearing and the failure to instruct him in his constitutional rights, permitted the multiple application of one plea of guilty to the remaining indictments although such procedure denies the defendant any information as to what the indictments charge. The use of such blanket plea is illegal and a deprivation of due process of law.

For these reasons, the conviction and sentence are, therefore, void.

ARGUMENT

I

Petitioner was indicted, arraigned and sentenced without due process of law.

With the possible exception of *DeMeerleer* v. *Michigan*, 329 U. S. 663, counsel's study of the authorities has revealed no case in this Court which more clearly comes within the principles enunciated in *Powell* v. *Alabama*, 287 U. S. 45, than does the instant case. Here is a seventeen year old youth, wholly ignorant of his rights and of criminal procedure, faced with a series of complicated and seri-

ous crimes and involving complex legal issues, without counsel and the opportunity of even consulting with relatives or friends, influenced and entrapped by the representations of a zealous law enforcement officer, and pushed to conviction without a single word uttered in his behalf. The conviction on a "plea" of guilty was virtually put into the mouth of this seventeen year old ignorant youth.

What kind of a hearing is it wherein there is a failure to inform this ignorant youth, without counsel, of any of the rights which are the essence of a hearing? The due process of law which the Fourteenth Amendment secures to every person charged with a crime requires this Court, when its jurisdiction is properly invoked, to review the whole course of state proceedings to see if any "principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental" has been violated. The most important among them is the right to "the substance of a hearing." *Palko* v. *Connecticut*, 302 U. S. 319, 327. In all criminal proceedings a state is required to give an accused the opportunity to meet the accusations against him. A formal hearing is not sufficient; the opportunity to answer must be real. Moreover, in reviewing a conviction alleged to result from denial of this fundamental right, this Court will not confine itself to the judicial proceeding but will scrutinize the prior conduct of state authorities in dealing with the Petitioner to ascertain whether it vitiated a proceeding which was formally correct. *Frank* v. *Mangum*, 237 U. S. 309, 327; *Smith* v. *O'Grady*, 312 U. S. 329; *Mooney* v. *Holohan*, 294 U. S. 103; *Carter* v. *Illinois*, 329 U. S. 173, 175.

The principle that every person charged with a crime has a constitutional right to the substance of a hearing has been never seriously questioned and has found numerous applications in the decisions of the Court. *Frank* v. *Mangum*, 237 U. S. 309, 327; *Moore* v. *Dempsey*, 261 U. S. 86;

Powell v. *Alabama*, 287 U. S. 45; *Mooney* v. *Holohan*, 294 U. S. 103; *Smith* v. *O'Grady*, 312 U. S. 329; *DeMeerleer* v. *Michigan*, 329 U. S. 663; *Townsend* v. *Burke*, 334 U. S. 736.

The procedural niceties of a hearing are a sham when the accused cannot meet the charges because he cannot comprehend them or intelligently manage his defense. Consequently the canons of decency and fairness which are essential to due process impose uniformly upon states the duty to take whatever measures are necessary under the circumstances of each particular case to insure that the accused understands the charge and has a fair opportunity, through one means or another, to intelligently prepare and present his answer. Thus, for example, courts have uniformly aided an accused in obtaining witnesses to establish his defense or supplying interpreters in those cases where such are necessary for a full understanding of the proceedings. These are paid for by the state in order to guarantee the essentials of a hearing without regard to the ability of the accused to pay for them. By the same reasoning, an explanation of the meaning of the accusations, of the ingredients of the offenses and the defenses potentially available may be equally indispensable. Courts generally consider such indispensable in charging a jury, and if a jury of laymen require such explanation, it follows that the very individual on trial should be afforded the same explanation. Here, a seventeen year old youth was placed on trial and if the courts considered it important to advise a jury prior to its deliberation concerning the guilt or innocence of an accused, how much more important is it for a judge to advise the accused who is on trial. Thus, the Court has held that when a serious crime is charged and the defendant is incapable of conducting his own defense, due process is not satisfied by anything less than the assignment of counsel. *Powell* v. *Alabama*, *supra*; *Rice* v. *Olson*, 324 U. S. 786; *DeMeerleer* v. *Michigan*, *supra*; *Wade* v. *Mayo*, 334 U. S.

672. And this need may exist whether the accused stands trial or pleads guilty. *Williams* v. *Kaiser*, 323 U. S. 471; *Rice* v. *Olson, supra; Foster* v. *Illinois*, 332 U. S. 134.

The personal qualifications of the accused, his age and education, the seriousness of the charge, and the complexity of the potential issues are material and determining circumstances. Summarizing its early decisions, the Court said, in *White* v. *Ragen*, 324 U. S. 760, 763:

> "We have many times repeated that not only does due process require that a defendant on trial upon a serious criminal charge and unable to defend himself shall have the benefit of counsel . . ."

The Court, in other decisions, suggests that in appropriate cases, the state may refrain from offering the assignment of counsel and delegate to the trial judge the responsibility of safeguarding the interests of the accused by giving him the legal advice and assistance necessary to a fair hearing. *Betts* v. *Brady*, 316 U. S. 455, 470-472; *Foster* v. *Illinois, supra*. Even though the Fourteenth Amendment does not establish a rigid procedure binding the states to offer counsel in all cases, its guarantee of due process of law requires a state, by one appropriate means or another, to give every person charged with crime whatever guidance is necessary for a fair opportunity to answer the accusations. Nothing less meets the bare requirements of the substance of a hearing. And where it is clear that neither procedure is followed, it cannot be said that due process of law has been complied with.

When this Petitioner was "arraigned," these essential safeguards were omitted. He was called upon to plead to nine indictments charging serious offenses. The number of charges, the nice distinctions and the legal verbiage would bewilder any layman let alone a youth seventeen years old;

it also appears that there were several defenses, the potential availability of which only learned counsel would appreciate. When the Petitioner was required to answer these charges, alone and unaided, he had been unlawfully shut off from advice and assistance and subjected to the psychological pressures of being held incommunicado. In court, he was not advised of his right to engage counsel, nor was he instructed on the particular offenses which the indictments charged. He was not even advised as to the consequences that a plea of guilty might entail.

The Petitioner's claim, therefore, does not rest upon the sole ground that because the record is devoid of any offer of counsel upon his plea of guilty, he was denied due process of law. The fundamental unfairness which vitiates the sentence under which he is held resulted from the concurrence of four different and distinct factors: (A.) the legality of the indictments; (B.) the complexity of the accusations; (C.) the misconduct of public officials; and (D.) the seeming indifference of the trial court towards Petitioner's rights.

A. The Indictments Were Illegal and Void

Nine indictments were prepared in this case by the District Attorney under the apparent authority of the Act of April 15, 1907, P. L. 62, 19 P. S. Sec. 241, without presentation to the grand jury (23-40). None was signed by the District Attorney as required under the Act of May 3, 1850, P. L. 654, 16 P. S. Sec. 3431, and the Act of March 31, 1860, P. L. 427, 19 P. S. Sec. 262. On the back of each indictment (R. 23-40) the following was rubber stamped:

> "And now Oct. 27, 1938, defendant having been charged with the offense herein set forth and having notified the district attorney of willingness to enter a plea of guilty and this indictment having been there-

upon prepared defendant after reading same do plead guilty thereto which plea is entered at request.
As to each defendant."

None of these indictments was signed by the Petitioner as required under the interpretation of the Act of April 15, 1907, P. L. 62, in effect at that time. None was shown to the Petitioner at any time.

The Act of May 3, 1850, P. L. 654, 16 P. S. Sec. 3431, in speaking of the duties of the District Attorney, provides, in part, as follows:

> "The officer so elected shall sign all bills of indictment, and conduct in court all criminal and other prosecutions in the name of the commonwealth. . . ."

In all of the cases that have arisen in the Commonwealth of Pennsylvania on the question of whether or not the public prosecutor is required to sign the indictments, the courts have ruled, in effect, that the prosecutor must sign, and even if there is an omission to sign, this defect may be corrected by subsequent proceedings. In the instant case, no subsequent proceedings were taken to correct the defect complained of. That the indictments must be signed by the District Attorney has the force not only of legislative enactment but also judicial interpretation. *Commonwealth* v. *Lenox*, 3 Brewster 249. In *Commonwealth* v. *Lenox*, *supra*, the court indicated the necessity of signature by the District Attorney. In that case, the indictment was not signed by the District Attorney and defense counsel moved to quash the indictment. The District Attorney then moved the court for leave to sign and affix his name at the foot of said indictment, which was allowed and thereby overruled the motion to quash. This particular provision of the law in Pennsylvania has not been changed by any subsequent rulings of court to the knowledge of the Petitioner and his counsel. In all cases where this question has been raised,

the Pennsylvania appellate courts have resolved this question against the respondents, particularly in cases arising under the Act of April 15, 1907:

Commonwealth ex rel. Mayernick v. *Ashe*, 139 Pa. Superior Ct. 421, 12 A. 2d 452;
Commonwealth ex rel. Penland v. *Ashe*, 142 Pa. Superior Ct. 403, 17 A. 2d 224;
Commonwealth ex rel. Slifko v. *Ashe*, 144 Pa. Superior Ct. 593, 20 A. 2d 799;
Commonwealth ex rel. Dende v. *Ashe*, 144 Pa. Superior Ct. 598, 20 A. 2d 802.

In *Commonwealth ex rel. Mayernick* v. *Ashe*, *supra*, the Court said (page 422):

"..... No indictment had been found against relator but sentence was purportedly imposed under the provisions of the Act of April 15, 1907, P. L. 62, which provides that in all criminal cases except homicide, a defendant charged with the commission of a crime may enter a plea of guilty, without the presentation of a bill of indictment to a grand jury and the finding of a true bill against him. Being in derogation of the common law, its provisions must be *strictly observed*. They are:

1. The district attorney must prepare a bill of indictment in the usual form—and this means just such an indictment as he would present to a grand jury—which must be sanctioned by him (Com. ex rel. Fagan v. Francies, 53 Pa. Super. 278, 289), that is, authenticated, or signed by him." (Italics supplied.)

In *Commonwealth ex rel. Penland* v. *Ashe*, *supra*, the Court said (page 404):

"(1) In the first place the 'indictment' was not signed by the district attorney. This defect was amendable and would be considered amended if there had been

any authentication of it by the court or the clerk of court, such as was present in Com. ex rel. Krannacher *v.* Ashe, 142 Pa. Super. 162, 15 A. 2d 855. But here there was none."

And neither was there anything to correct such defect in the instant case. The Respondents, by their silence on this point, confirmed the contention of the Petitioner. It is necessary to point out that even before the decision in the case of *Commonwealth ex rel. Mayernick* v. *Ashe, supra*, the Respondents were cognizant of the procedure required under the Act of 1907, for in *Commonwealth ex rel. Krannacher* v. *Ashe, supra*, a case arising in Allegheny County about a year after the action here involved, the Respondents *did* sign the "indictment." In the above case, both the District Attorney and the Sentencing Judge knew of the procedure to be followed under the Act of 1907 and a sentence of the lower court was upheld because (a) the indictment, although not signed by the defendant, was signed and endorsed by the judge as and for the defendant, and (b) the indictment *was* signed by the District Attorney.

The Act of 1907 provides, in part, as follows:

"Whenever hereafter, within this commonwealth, any person is charged with the commission of any crime, and such person is willing to enter a plea of guilty, and shall notify the district attorney to that effect, no bill of indictment charging such offense shall be sent to a grand jury; but the district attorney shall at once prepare a bill of indictment, in the usual form, and the plea of guilty shall, at the request of said defendant or defendant's counsel be entered thereon, and the court of the proper county at any session thereof, shall thereupon, forthwith, impose sentence for the offense set forth therein: Provided, however, That nothing in this act shall be construed so as to relate to, or change the proceedings in, homicide cases in this

commonwealth: And provided further, That the defendant may withdraw his plea of guilty, at any time before sentence, by leave of the court."

This Act clearly implies that before the District Attorney can proceed by what is called a "district attorney's bill," there must be a waiver of the right to have the grand jury return a true bill and without this waiver, the subsequent acts of the District Attorney constitute a nullity. The act of the accused in waiving his constitutional right is the only procedure by which the District Attorney can proceed under the Act of 1907. Here, the Petitioner (R. 16, 20) denies having signed such waiver; the District Attorney has been unable to produce such waiver and does not contend that such waiver was, in fact, signed, and the record discloses no such waiver. All of the cases arising under the Act of 1907, with the possible exception of one, show a waiver in writing signed by the accused or his counsel.

In *Commonwealth* v. *Francies*, 53 Pa. Superior Ct., 278, 289, the Court, in construing the Act of 1907, said:

> "To hold that this provision is merely directory, and that want of compliance with it is a mere informality which is cured or waived by a premature plea of guilty, would not be warranted either by the letter or spirit of the act, and would be in contravention of general principles universally recognized as most material in the administration of punitive justice. The very case we have before us shows the confusion and uncertainty that are likely to result if it be held that the statutory safeguards may be disregarded or treated as mere technicalities and not as matters of substance. If an accused is to be deemed to have waived them, and to have consented to be sentenced to infamous punishment, such waiver and consent must be affirmative and express, and may not be rested on doubtful and uncertain inference."

And further, on page 292, it was said:

> "It is urged that the discharge of the prisoner will establish a bad precedent. We do not think so. A bad precedent cannot be established by a decision according to law, even though it may result in the party's escape from the full measure of punishment he deserves. A bad precedent would be established by holding that the provisions of the act of 1907 are directory only, and may be treated as relating to mere matters of form."

In *Commonwealth ex rel. Mayernick* v. *Ashe*, 139 Pa. Superior Ct. 421, a case arising in Allegheny County, the Court said:

> "2. The defendant's plea of guilty shall be entered thereon. It is our opinion that this means that the plea must be endorsed or entered on the 'indictment', and in view of the lack of a finding of a true bill by the grand jury, and the requirement that it be entered at defendant's request the plea should be signed by the defendant if able to do so, and if not his mark should be made in the presence and be witnessed by the clerk, or a court officer. This attests his request that the plea of guilty be so entered. These are safeguards, designed to avoid any uncertainty as to what the defendant was charged with and to what he pleaded guilty.

And going further, the Court said:

> "We are of opinion that the provisions of the act of 1907, supra, were not substantially complied with, and following the decision of this court in Com. ex rel. Fagan *v.* Francies, 53 Pa. Super, 278, and the reasons therefor so well stated by Judge Rice on pages 290-293 of 53 Pa. Super., that the sentence of the Court imposed thereon was void for want of jurisdiction under the Act."

The Respondents infer that because his alleged offenses were reported in open court and the sentence imposed there-

on were initialed by the Sentencing Judge, the Petitioner must have known the crimes wherewith he was charged. This conclusion, however, overlooks the undisputed fact that twice nothing amounts to nothing. The Petitioner, by appearing in open court, with limited education, completely bewildered and being totally unfamiliar with criminal procedure and the requirements of the Act of 1907, could not breathe legality into a void act. The initial of the sentencing judge, after sentence has been imposed, cannot cure such defect, for his initial merely authenticates the sentence actually imposed and has nothing to do with the propriety of the indictment.

B. The Charges Against Petitioner Were of Such Complexity as to Require Guidance of Counsel in Arriving at an Understanding Answer

When the Petitioner was brought before the Court of Oyer and Terminer, he was called upon and supposed to have plead to nine indictments charging him with a multitude of different crimes. The record discloses no pleas entered by the Petition (R. 41-45). He states he plead to one charge of burglary. The courts below state he plead to four indictments. The Assistant District Attorney stated that the Petitioner admitted all the various charges set forth in the informations that have been filed (R. 43), and further (R. 9) that he was indicted for crimes on which no indictments were even prepared against him (indictments Nos. 88-89-90-91 and 92). Indictment No. 81 charged the Petitioner with burglary in the first count and receiving stolen goods in the second count. Indictments Nos. 82, 83 and 84 also charged the Petitioner respectively in the first counts with burglary and in the second counts with receiving stolen goods. Indictments Nos. 85, 86, 87 and 93 charged the Petitioner with burglary. Indictment No. 741 charged the Petitioner with felonious assault. It is pertinent to

point out that Indictments Nos. 85, 87 and 93 were fatally defective in that each indictment contained several distinct charges of burglary.

The statutes under which these indictments were brought were as follows:

1. The charges of burglary were laid under the Act of 1860, March 31, P. L. 382, 18 P. S. 3041, which provides, in part, as follows:

> "If any person shall, by night, willfully and maliciously break or enter into the state capitol, or other public building belonging to the Commonwealth, or to any city or county thereof, or to any body corporate, society or association, or into any church, meeting house or dwelling house, or out house parcel of said dwelling house, with intent to kill, rob, steal, or commit a rape, or any felony whatsoever, whether the felonious intent be executed or not, the person so offending shall on conviction, be adjudged guilty of felonious burglary; . . . ."

In order to sustain a conviction under this statute, three elements must be present. The entry must be at night and willful and malicious. The entry must be in a public building or dwelling. The accused must enter with intent to commit a felony.

Under this statute, proof of entry is not sufficient; an actual or constructive breaking is a part of the offense. *Roland* v. *Commonwealth*, 82 Pa. 306; *Johnston* v. *Commonwealth*, 85 Pa. 54.

2. The charges of receiving stolen goods were laid under the Act of 1909, April 23, P. L. 159, 18 P. S. 2861, which provides, in part, as follows:

> "If any person shall buy, have, receive, within the limits of the Commonwealth of Pennsylvania, any goods, chattels, moneys or securities, or any other matter or thing, which shall have been stolen or felon-

iously taken, either in the Commonwealth of Pennsylvania or in any other state or country, knowing the same to have been stolen or feloniously taken, such persons shall be guilty of felony . . . ."

Three elements are necessary for conviction under this statute. It must be proved that the goods were actually stolen. It must be proved that the goods were actually in possession of the accused. It must be proved that the accused had knowledge that the goods were stolen. A person under this Act cannot be indicted for receiving stolen goods unless he has taken them into his possession, either actually or potentially. *Sleigh's Case*, 3 Brewster 342. Even proof of an unexecuted agreement to share in the sale of stolen goods is not sufficient to sustain conviction. *Commonwealth* v. *Light*, 195 Pa. 220. A conviction cannot be had on the uncorroborated testimony of the thief. *Commonwealth* v. *Potts*, 18 Phila. 477.

3. The charge of felonious assault was laid under the Act of 1860, March 31, P. L. 382, as amended by the Act of 1876, May 1, P. L. 92, 18 P. S. 2228, which provides, in part, as follows:

> "If any person shall . . . shoot at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person . . . with intent in any of the cases aforesaid to commit the crime of murder, he shall, although no bodily injury be effected, be guilty of felony, . . . "

In order to convict under this statute, it must be proved that there was a shooting or drawing of the trigger, that the weapon was loaded and directed at some person, and the intent to commit murder.

In view of the charges and the necessary elements of each charge, an experienced criminal lawyer assigned to defend the Petitioner would certainly have inquired into the cir-

cumstances under which Petitioner was alleged to have committed these various charges. He would have first ascertained whether the elements necessary to constitute the crime were present. He would have ascertained whether or not the Petitioner was directly involved in any of the charges as outlined in the indictments and would have determined what, if any, defenses were available, based upon a careful study of the facts and of the law.

Argument is scarcely necessary to demonstrate that merely hearing these various charges read aloud, a layman could not plead intelligently to these indictments embracing many distinct offenses. Less argument is necessary to show that it would be an impossibility to plead, intelligently or otherwise, to indictments not even read to the Petitioner. He knew he was confronted with one charge of burglary, but beyond this, he was not placed in a position of distinguishing or differentiating between the various charges, even if a youth of seventeen were able to do so. He would not know and could not have known that indictments Nos. 85, 87 and 93 each charged him with several distinct crimes, that each crime contained its own peculiar ingredients, and that different defenses might be available to each. Even if it is assumed that Petitioner could have distinguished between the different indictments in entering a plea, or that he must have known that he had committed a crime, the degree of prejudice caused by the absence of counsel is left to speculation. Only counsel, after a thorough study of the relevant facts, could determine the charges to which a plea of guilty was appropriate. But, while proof of prejudice is not essential (*Williams* v. *Kaiser*, supra), it is plain from this record that there were important issues which Petitioner could not appreciate but which experienced counsel could have explored before advising him how to plead. A careful study of the evidence available suggests that experienced

counsel would have advised Petitioner to plead not guilty to most, if not all, of the various charges. (R. 41-45).

Officer Cavanaugh was called as a witness to describe part of the crimes for the judge's guidance in passing sentence.

"Officer Cavanaugh: The only thing I know, we were getting calls about a series of robberies of these houses in the Squirrel Hill District. Our district runs from Forbes Street over and the biggest part of these were supposed to have been committed on the other side of Forbes St. We got a call one night on the last house they got into on Bellrock St. and from information received located where the two defendants had been rooming on Howe St. Two days later we got a call to Scarborough and Grouse St. and when we got there we caught McKim and the other boy got away. We caught Uveges later in the vicinity of Howe St.

Mr. Langfitt: How did they get in these places?

Officer Cavanaugh: They would use a glass cutter and in this way get at the lock.

Mr. Langfitt: Was this always in the night time?

Officer: No.

Mr. Langfitt: Were the people whose homes were entered at the home when they got in?

Officer: Not generally.

Mr. Langfitt: Did you recover most of the loot?

Officer: The biggest part of it in McKim's room.

Mr. Langfitt: Over what period of time were the entries made?

Officer: Between 2 and 2½ months."

Mrs. Price was called to describe one of the burglaries.

"Mr. Langfitt: Are you one of the parties whose home was entered?

Mrs. Price: Yes.

Mr. Langfitt: Just tell what happened there.

Mrs. Price: We were sitting in the living room one evening. The windows in the rear of the house were locked and screened. We did not hear anything but

later when I went back to look for my purse, I discovered all of the drawers had been pulled out and their contents on the floor or badly mussed up. We then discovered that whoever had come in had removed the screen and opened the latch on the window in some manner. I could not find my purse and then discovered that it was gone.

Mr. Langfitt: Did you see either of the defendants?

Mrs. Price: No, but now I recognize this boy (indicating McKim) as one whom I had seen loafing around the house later in the day."

Mrs. Wilma Harris was called to describe the felonious assault.

"Mrs. Wilma Harris, 945 Flemington Ave., Pittsburgh: It was around 2:45 in the morning of Sep. 9th. I thought I heard someone coming into my bedroom. I was awake at the time and I turned my head over so slightly and asked who was there. I did not get any answer and whoever it was went back down the hall. I then asked who was there again and when I said this someone said, 'Shut up, if you don't shut up I will let you have it.' With that whoever it was shot and then my husband got up and they ran."

It is clear from the record that the testimony of these unsworn witnesses (R. 41) offered little towards the conviction of Petitioner. In this proceeding, there is no occasion to pass judgment upon the merits of the potential defenses suggested. Upon investigation, some or all might have been found to lack merit, or the facts might have suggested others. Their only importance in this case is to illustrate the inadequacies of the hearing which the Petitioner received. Thus, what was said in *Powell* v. *Alabama*, is applicable here:

"Even the intelligent and educated layman has small and some times no skill in the science of law. If charged with crime, he is incapable, generally, of determining

for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."

These observations are as pertinent in connection with the accused's plea as they are in the conduct of a trial. *Williams* v. *Kaiser*, 323 U. S. 471, 475. In brief, the Petitioner rests his contentions on this phase of the case on two propositions. First, due process of law requires a state to offer counsel to those indigent defendants not otherwise protected whenever the charges are too serious and the issues too complex to permit a fair opportunity to answer without legal advice. Second, in the instant case, although Petitioner required such assistance to adequately answer the accusations with which he was confronted, the police held him incommunicado, no offer of counsel was tendered and no care for his protection taken by the court.

C. The Misconduct of Public Officials Increased Petitioner's Need for the Assistance of Counsel

While the informations, upon which indictments were based in this case, are not a part of the record, a reference to them clearly sustain the contention of the Petitioner that improper police practices were used in connection with his detention. The Petitioner was arrested on October 4, 1938. From the date of his arrest to October 15, 1938, at

which time he was lodged in the Allegheny County Jail, he was shunted between three different police stations and the Allegheny County Detective Bureau without an opportunity afforded him to see his family or friends. Such conduct on the part of the police officials is not merely a departure from formal routine. The private or secret interrogation of arrested persons prior to indictment has become common practice and, in many cases, the foundation of harsh criticism and judicial condemnation. In Pennsylvania, the rules requiring the police to bring an arrested person promptly before a magistrate or justice of the peace, are designed to protect men against the reprehensible practice know as the "third degree" which, although universally objected to as indefensible, still find their way into use. Such serious misconduct on the part of the police is certainly relevant in determining whether, as a result of the court's failure to offer Petitioner legal assistance, an element of fundamental unfairness operated in the process which resulted in his confinement. Where the basic safeguards of criminal procedure are observed, a defendant is brought before a justice of the peace or a magistrate promptly upon his arrest; he is informed of the charges against him, given time to consider his predicament, and afforded an opportunity for consultation with family or friends. Even thereafter, a careful judge, particularly where a minor is involved, before accepting a plea, would assure himself that the defendant understood the charges, his right to a trial, and the possible consequences of a plea of guilty. Where those safeguards are observed, it is possible that the voluntary entry of a plea of guilty without request for counsel is to be taken as evidence that the accused felt no unfairness in being called upon to answer the indictments without legal advice. *Foster* v. *Illinois*, *supra*. That question, however, is not present here, for in the Petitioner's case, all those safeguards were omitted.

There has been no denial of the Petitioner's contention that at the interview held in the District Attorney's office, when request for counsel was made, instead of receiving encouragement for representation of counsel, he was threatened that if the state were put to the expense of a trial, a sentence of not less than twenty years was certain to follow. Instead of receiving encouragement, the Petitioner was tricked and entrapped into entering a plea of guilty on a charge of burglary at a time when the District Attorney was contemplating the preparation of indictments on every possible charge contained in the informations. The reason is obvious. Without some arrangement made for a guilty plea, the District Attorney was required by law to present the informations to the grand jury for any action it might care to take. This interview in the District Attorney's office may tend to show the reason for the absence of Petitioner's signatures to the pleas on the back of each indictment.

While the narrative transcript of the testimony attached to the record (R. 41-45) is strictly speaking not a part of such, it has been attached by stipulation of counsel for Petitioner to show the misleading statements of the Assistant District Attorney. Notwithstanding the fact that only nine indictments were prepared, the same Assistant District Attorney, who held out promises of leniency, stated to the court, either by design or mistake, that the Petitioner, along with another boy, was charged with sixty-seven burglaries, seven charges of violation of the Firearms Act, two charges of pointing a fire arm and one charge of felonious assault. It is impossible to state at this time to what extent the sentencing judge was motivated by such misinformation in meting out punishment of such severity upon a boy of such tender age. The Assistant District Attorney did not inform the court of the arrangement concerning the plea, but merely stated:

"The defendants admit the various charges set forth in the informations that have been filed."

There is nothing in the record to indicate that the Petitioner, by waiver or other action, gave consent to the multiple application of his one plea of guilty. However, for reasons not made clear, the Assistant District Attorney used the one plea to cover all of the indictments that were prepared in this case. So far as the record indicates, the court was not advised as to the number of charges to which the Petitioner plead guilty. Such unauthorized use of a blanket plea denies a defendant any information as to what the indictments charge and places no restriction on the number of charges the District Attorney may terminate by using a single plea as a rubber stamp. It is essential to the protection of an accused to be informed as to the precise accusation or accusations to which he is to plead and such unauthorized blanket plea gives no information whatever as to the charges against him.

It was the position of the District Attorney and the lower courts that the Petitioner plead to four indictments, although there is nothing in the record to indicate such assumption. If one were to account for the number of pleas entered by looking at the indictments themselves (R. 23-40), the only conclusion that could be reached is that the Petitioner plead to all nine indictments. However, even the District Attorney has not been willing to go so far (R. 9.)

The misinformation supplied by the District Attorney in this case would be sufficient by itself in holding that the Petitioner was not accorded due process of law, as was so aptly stated in *Townsend v. Burke*, 334 U. S. 736, 740:

"We believe that on the record before us, it is evident that this uncounseled defendant was either over-reached by the prosecution's submission of misinformation to

the court or was prejudiced by the court's own misreading of the record. Counsel, had any been present, would have been under a duty to prevent the court from proceeding on such false assumptions and perhaps under a duty to seek remedy elsewhere if they persisted. Consequently, on this record we conclude that, while disadvantaged by lack of counsel, this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue. Such a result, whether caused by carelessness or design, is inconsistent with due process of law, and such a conviction cannot stand."

D. The Courts Omitted Measures Which Might Have Protected Petitioner Against Unfairness

It is apparent that the trial court, as well as the appellate courts, was concerned only with its belief that Petitioner was guilty and not with the due process requisite to establish criminal liability. The courts, in this case, either ignored or repudiated the very due process questions involved. Even though the trial court had knowledge that the Petitioner appeared without benefit of counsel and must have known that a minor youth was faced with complex and serious charges against him, no offer was made to furnish him with legal assistance and no attempt was made to inform the Petitioner of the seriousness of the charges against him, or took any step whatever to inform the Petitioner as to the possible consequences of his plea. The right to be represented by counsel is a fundamental right, going to the very basis of the administration of criminal law; and it places on the trial judge the onus to inform the defendant of his rights and to assist him in obtaining the benefits of those rights. Even if the Petitioner made no specific request to be represented by counsel, his ignorance of his rights in the matter, under the circumstances of this case, would be sufficient excuse for that default. A youth of seventeen years

of age would be hardly expected to be fully familiar with constitutional guarantees of which even laymen of mature intellect are ignorant. Under these circumstances, it was the duty not only of the District Attorney but the court itself to call attention to fundamental safeguards. The failure of the trial court to inform him of his rights amounts to a denial of the right. Article I, Section 9 of the Pennsylvania Constitution guarantees to accused persons in all criminal cases, the right to be heard by counsel, but such a guarantee is meaningless when an accused is not notified of his right to counsel at any stage of the proceedings. The limitation of this basic right only to those cases where such right is offered would create mockery of fundamental justice. For, as so aptly stated by the Supreme Court of Pennsylvania, in *Commonwealth* v. *O'Keefe*, 298 Pa. 169, 173, 149 A. 73:

> "It is vain to give the accused a day in court, with no opportunity to prepare for it, or to guarantee him counsel without giving the latter an opportunity to acquaint himself with the facts of the case."

The failure of the court to inform the Petitioner as to his rights to counsel or to appoint counsel for him under the circumstances, was fundamental error. "Courts sit not only for the disposition of business but primarily for the dispensation of justice." *Commonwealth* v. *Valerio*, 118 Pa. Super. Ct. 34, 178, A. 509.

In *Wade* v. *Mayo*, 334 U. S. 672, 684, this Court said:

> ". . . It was also in error in assuming that the failure to appoint counsel in a non-capital case in a state court is a denial of due process under the Fourteenth Amendment only if the law of the state requires such an appointment. To the extent that there is a constitutional right to counsel in this type of case it stems directly from the Fourteenth Amendment and not state statute."

It seems to be the trend of courts in Pennsylvania and elsewhere to hold that where the legislature has provided for the appointment and pay of counsel in murder cases only, that by reason of this legislative enactment, the court is not bound to appoint counsel to represent an inexperienced young man, who is poverty-stricken and unable to employ counsel for a fair trial. This was neither the practice nor the law of Pennsylvania at the time of Petitioner's conviction. *Commonwealth ex rel. Schultz* v. *Smith*, 139 Pa. Super. Ct. 357, 11 A. 2d 656, 659. There seems no logic in the reasoning that where the state has provided for the appointment of counsel with pay in capital cases only, the legislature intended furnishing of counsel in no other felony cases. It is believed that the intention of the legislature in this particular law was to provide compensation for attorneys appointed in murder cases, rather than to limit the right of appointments to only capital cases and not other serious felonies. This conviction carries a maximum of forty years. In a case for murder in the second degree, a defendant can be sentenced to a maximum term of twenty years, considerably less than the maximum here. Who can say which man will have the first opportunity to gain his freedom? And yet, the Commonwealth is required to furnish counsel to indigent prisoners charged with murder, but not to others according to the respondent.

If counsel undertake to represent indigent persons in this Court without compensation, it is not asking too much to require state courts to ask its bar to do likewise in the interest of justice and protection of fundamental rights.

The appellate courts have taken the position in this case that a court is required to inquire whether a defendant desires counsel or offer to appoint counsel only in capital cases (R. 13). It is also stated in effect that, based on relatively recent rulings, the matters complained of were procedural defects which could be corrected.

Disregarding for the moment the obligation to appoint counsel, the fact that due process guarantees the right to counsel in criminal cases in state courts is today too well established to justify discussion.

Powell v. *Alabama*, 287 U. S. 45;
Ex parte Hawke, 321 U. S. 114;
Williams v. *Kaiser*, 323 U. S. 471;
Tomkins v. *Missouri*, 323 U. S. 485;
House v. *Mayo*, 324 U. S. 42;
White v. *Ragen*, 324 U. S. 760;
Rice v. *Olson*, 324 U. S. 786;
Hawk v. *Olson*, 326 U. S. 271;
DeMeerleer v. *Michigan*, 329 U. S. 663;
Townsend v. *Burke*, 334 U. S. 736;
Wade v. *Mayo*, 334 U. S. 672.

See also:

Grosjean v. *American Press Co.*, 297 U. S. 233, 243-244;
Palko v. *Connecticut*, 302 U. S. 319, 324, 327;
Avery v. *Alabama*, 308 U. S. 444, 445;
Betts v. *Brady*, 316 U. S. 455;
Canizio v. *New York*, 327 U. S. 82, 85;
Johnson v. *Zerbst*, 304 U. S. 485;
Walker v. *Johnston*, 312 U. S. 275, 286;
Holiday v. *Johnston*, 313 U. S. 342;
Glasser v. *United States*, 315 U. S. 60.

Further, it is now settled by the above cases that the guarantee of right to counsel includes counsel to advise on the plea and a defendant who pleads guilty is as much entitled to counsel as one who pleads not guilty.

It is also well established that counsel must be furnished in other than capital cases. *Smith* v. *O'Grady*, *supra* (robbery); *Powell* v. *Alabama*, *supra* (rape); *Rice* v. *Olson*, *supra*

(burglary); *White* v. *Ragen*, *supra* (obtaining money and goods by means of the confidence game); *Williams* v. *Kaiser*, *supra* (robbery); *Betts* v. *Brady*, *supra* (robbery); *Wade* v. *Mayo*, *supra* (breaking and entering); *Townsend* v. *Burke*, *supra* (burglary and robbery).

As was stated in *Walker* v. *Johnston*, *supra*:

> "If he did not voluntarily waive his right to counsel, or if he was deceived or coerced by the prosecutor into entering a guilty plea, he was deprived of a constitutional right."

While the above case was decided under the Fifth and Sixth Amendments to the Constitution of the United States, in *Smith* v. *O'Grady*, *supra*, this Court under circumstances very similar to the instant case, decided that incarceration for the charge of robbery without aid of counsel violated the due process clause of the Fourteenth Amendment. The Court, speaking through Mr. Justice Black, said:

> "These allegations, if true, undermine and invalidate the judgment upon which petitioner's imprisonment rests. The circumstances under which petitioner asserts he was entrapped and imprisoned in the penitentiary are wholly irreconcilable with the constitutional safeguards of due process. For his petition presents a picture of a defendant, without counsel, bewildered by court processes strange and unfamiliar to him, and inveigled by false statements of state law enforcement officers into entering a plea of guilty."

In *Powell* v. *Alabama*, *supra*, the Court, in discussing a hearing, said:

> "What, then, does a hearing include? Historically and in practice, in our own Country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by

counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without legal aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issues or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect."

In *Rice* v. *Olson, supra*, this Court said:

"Whatever inference of Waiver could be drawn from the petitioner's plea of guilty is adequately answered by the uncontroverted statement in his petition that he did not waive the right either by word or action. This denial of waiver squarely raised a question of fact. The State Supreme Court resolved this disputed fact by drawing a conclusive implication from the petitioner's plea of guilty. This is the equivalent of a holding that one who voluntarily pleads guilty without the benefit of counsel has thereby competently waived his constitutional right to counsel, even though he may have sorely needed and been unable to obtain legal aid. A defendant who pleads guilty is entitled to the benefit of counsel, and a request for counsel is not necessary" (page 788).

The right to counsel in criminal cases other than capital has been recognized by the Pennsylvania appellate courts in *Commonwealth* v. *Valerio*, 118 Pa. Superior Ct. 34, 178

A. 509; *Commonwealth* v. *Richards*, 111 Pa. Superior Ct. 124, 169 A. 464; *Commonwealth, ex rel. Schultz* v. *Smith*, 139 Pa. Superior Ct. 357, 11 A. 2d 656. The right to representation by counsel and the duty of the trial court to so inform the accused or the appointment of counsel in his behalf was the established law at the time of the conviction of Petitioner.

The declared interpretations of the Act of 1907, *supra*, and the Act of 1850, *supra*, should not be construed to take away a fundamental right existing at the time of Petitioner's conviction. If a statute passed by the legislature, which changes punishment, or takes away fundamental rights, can be declared to be *ex post facto*, a court, in disregarding former rulings on the same subject, and in effect overruling them in later opinions, and depriving a defendant of some lawful protection existing at the time of his conviction, or placing him to his material disadvantage, may also in effect hand down a ruling in nature of *ex post facto*. Even the decision of a judicial body should not be permitted to be retroactive if a previously existing right is destroyed thereby.

Conclusion

Briefly, the Petitioner contends that when a defendant has been accused of crimes which he cannot comprehend sufficiently to make an intelligent response alone and unaided—when he has been subjected to all the confusion and despair engendered by unlawful confinement, shut off from friends and counsel who could come to his aid—due process of law requires a state to adopt some measure sufficient to give him a real understanding of the charges, the corresponding defenses, and the course of conduct which he may follow. He does not contend that this Court should set the rigid procedure for all states. That is for the state to

determine. The measures adopted may include an offer of counsel or, in appropriate cases, an impartial inquiry by a fair-minded judge.

The fundamental unfairness that vitiates Petitioner's conviction is the failure of the Commonwealth to adopt any measure which would assure Petitioner an opportunity to comprehend and answer the accusations. The whole course of the proceedings was calculated to rush Petitioner to the penitentiary without a real opportunity to make an understanding defense. Haste can never be used as an excuse to deprive one of fundamentals of justice and in violation of rights guaranteed by the Fourteenth Amendment. The indictments charged offenses involving nice legal distinctions to which important defenses may well have been available but as to the existence of which Petitioner, as a young layman, could hardly guess. The prosecuting officials, through indifference or overzealousness, detained him unlawfully isolated from family and friends. The court neither explained the offenses nor advised him of his constitutional rights, although he was obviously ignorant thereof primarily because of his youth. The court seemingly permitted the use of unauthorized blanket plea and gave him no opportunity to understand and answer the accusations. The appellate courts likewise either ignored or were indifferent to the constitutional rights involved. Under all the circumstances, it is plain that Petitioner did not have the substance of a hearing and was sentenced to the penitentiary without due process of law.

The Petitioner, as a humble citizen, comes into this Court, with the Constitution of his country in his hand, and respectfully asks this Court of last resort to mete out justice he has failed to get in the proceedings below.

Because the constitutional rights of the Petitioner have been deprived, because the indictments, conviction and sentence of the Petitioner were illegal and void, the judg-

ment of the Supreme Court of Pennsylvania should be reversed and, in view of the long confinement, the Petitioner discharged.

Respectfully submitted,

ALBERT A. FIOK,
Counsel for Petitioner.

September, 1948.

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SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1948

NO. 75.

ELMER UVEGES, Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA.

BRIEF FOR RESPONDENT.

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COMMONWEALTH OF PENNSYLVANIA.

BRIEF FOR RESPONDENT.

OPINIONS IN COURTS BELOW.

The opinion of the Superior Court of Pennsylvania was officially reported in 161 Pa. Superior Ct. 58. A petition for allocatur to the Supreme Court of Pennsylvania was refused without opinion 161 Pa. Superior Ct. XXV.

JURISDICTION.

Certiorari was granted by this Court on 7 June 1948 pursuant to jurisdiction conferred on it by Section 237, (b) of the Judicial Code, as amended, 28 U.S.C.A. Section 344 (b).

COUNTER-STATEMENT OF CASE.

In 1938 the petitioner, then 17 years of age, and a confederate were charged with a series of burglaries and related crimes. The charges against the two defendants numbered forty-eight burglaries, seven charges of violation of the firearms act, two charges of pointing firearms and one charge of felonious assault. The confederate was also charged with the commission of a number of additional burglaries without the petitioner's assistance.

The two defendants plead guilty and were given sentences of five to ten years on each of four indictments. R. 24, 26, 28, 30. Sentences were suspended on the charges contained in the other indictments, R. 32, 34, 36, 38, 40. On pages 41 to 45 of the record under the designation Stenographer's Notes, there is an account of the proceedings which resulted in the confinement of the accused persons.

Subsequently, in 1946, the petitioner filed in the Court of Common Pleas of Allegheny County an application for a writ of *habeas corpus*. R. 4. The writ was denied without a hearing (R. 7, 8); and upon appeal, the Superior Court of Pennsylvania affirmed the decision of the court below, 161 Pa. Superior Ct. 58, R. 11. The petitioner then filed with the Supreme Court of Pennsylvania a petition for allowance of an appeal, R. 15. The right to appeal being denied, the petitioner petitioned this court for a writ of certiorari. This petition was allowed and the case was ordered down for argument, R. 45.

Although the petitioner has advanced numerous contentions it would seem, for reasons set forth in some detail in the Argument, the basic question to be decided by this court is whether or not under the circumstances

here present petitioner was denied due process of law by reason of his not being represented by counsel at the proceedings which resulted in his confinement.

SUMMARY OF ARGUMENT.

1. Petitioner asserts certain factual claims which were not previously presented to or considered by the Supreme Court of Pennsylvania. Such allegations being dehors the record may not be made the basis of a decision by this Court.

2. Petitioner contends that certain proceedures followed by the Pennsylvania Courts were not in accord with the statutory and decisional law of Pennsylvania. This contention raises no federal constitutional question and hence must be decided by the Supreme Court of Pennsylvania and not by this Court.

3. The basic question of this case is whether the petitioner was denied due process of law by reason of the fact that the Commonwealth of Pennsylvania did not appoint Counsel to represent him in the proceedings leading to his imprisonment. It is the contention of the respondent that the federal Constitution did not require that the state appoint Counsel to represent this accused since

(A) The requirement of the 6th Amendment to the federal constitution that the accused be represented by counsel in *all* criminal cases does not apply to the states and

(B) It is only in a capital case or under other special circumstances *not here present* that a state is required by the 14th Amendment to the Federal Constitution to appoint counsel to represent the accused.

ARGUMENT.

1. Factual Matters Not of Record May Not Be Made the Basis of a Determination by This Court.

This case was initiated by a petition for *habeas corpus* presented to the Court of Common Pleas of Allegheny County, Pennsylvania. Upon appeal, the case was decided by the Superior Court of Pennsylvania. 161 Pa. Superior Ct. 58. R. 11. A petition for *allocatur* was presented to the Supreme Court of Pennsylvania, but that court refused to hear the case, thereby affirming the Superior Court decision. R. 15, 21. Subsequently, a petition for a writ of certiorari was presented to and granted by the Supreme Court of the United States. R. 45. The petition to the Supreme Court of the United States contained allegations which were not litigated in the Pennsylvania Courts. The apparent purpose of the factual additions was to bring the case within the factual grounds upon which certain recent cases were decided. In his brief, presented to this court, the petitioner has asserted further additional facts which were not considered by the courts below.

Factual matters not of record and which have never been litigated in any of the Pennsylvania Courts include the following:

1) that petitioner was held *incommunicado* for almost two weeks between his arrest and trial
2) that petitioner was shunted from one police station to another to prevent his contacting family and friends
3) that petitioner requested counsel and that his request was denied

4) that the District Attorney misinformed the sentencing judge

5) that petitioner was advised that if the Commonwealth were put to the expense of trial, a sentence of not less than 20 years was certain to follow.

There is no basis for accepting these various new allegations. If they were to be accepted, this appellate court would be required to decide "a case" never litigated in any of the Courts of Pennsylvania.

2. Matters of Local Law May Not Be Decided by This Court.

Counsel for the petitioner has attacked the validity of the indictments under which the petitioner was sentenced. He contends (1) that, under Pennsylvania law, the District Attorney is required to sign the particular indictments, (2) that under Pennsylvania law, defendant is required to sign a plea of guilty on such indictments.

These contentions involve decisions as to what constitutes proper procedure under state law. They raise Pennsylvania questions—not Federal questions. Neither the first of petitioners contentions which was not previously considered by the Pennsylvania Courts, nor the second contention, which was decided adversely to petitioner (*Com. v. Uveges,* 161 Pa. Superior Ct. 58 p. 59 and 161 Pa. Superior XXV) is properly in issue here. The following comments, contained in the opinion of the *United States v. Ragen,* 166 F. 2d 977 at 981, are pertinent:

"When we condemn a states exercise of its jurisdiction and hold that the exercise of its powers is not

in accordance with due process, we are in effect trying the States. It is State action that is on trial, and a decent regard for the coordinate power of the two governments requires that we give due process to the State. That is the reason that in habeas corpus the relator must first show that he has exhausted his state remedies to open the way for the Federal Courts to try the State's exercise of its sovereign power."

It is true, of course, as implied in the above quotation that the Federal Courts may call into question the constitutionality (federal) of any state law, but they may not presume to establish state procedure in the first instance.

3. Petitioner Was Not Denied Due Process of Law by Reason of the Fact That the State Did Not Appoint Counsel to Represent Him at the Proceedings Resulting in His Imprisonment.

The vital question to be decided, and, in our view of the case the only significant question, is whether the accused, under such facts as are properly before this Court, must be represented by counsel in order that the process leading to his confinement may be deemed *due* process.

This court has decided numerous recent cases (beginning with *Powell v. Alabama,* 287 U.S. 45 77, L. ed: 158) in which the duty of the states to appoint counsel has been carefully considered. Certain of the considerations which have been established by these decisions, and which are pertinent to the case at hand, are set forth in the following paragraphs:

1. The Supreme Court of the United States is without jurisdiction to decide "a case" based upon allegations which, heretofore, have not been asserted in any of the courts of the state.

This elementary proposition requires attention only because petitioner's argument gives great emphasis to allegations set forth in paragraph 1 *supra* which are *dehors* the record. It is apparent, however, that in other *habeas corpus* cases, reliance has been placed upon similar assertions not of record. In *Foster v. Illinois,* 332 U.S. 134, 135, 91 L. ed. 1955, 1957, this Court refused to consider such allegations and stated:

> "Since the controversy turns on the legal significance of the circumstances under which the pleas of guilty were accepted, it is important to state them according to the record, which for purposes of this proceeding is binding upon the Illinois Supreme Court and therefore upon this Court",

and elsewhere in the same opinion (332 U.S. 139, 91 L. ed. at 1959) this Court stated:

> "Insofar as the sentences in this case are attacked on claims which were not open for consideration on the Common Law record, which alone was before the Illinois Court * * * they are not open here. *Carter v. Illionois,* 329 U.S. 173, ante 172, 67 S. Ct. 216. They must be raised by whatever procedure Illinois may provide or in default of relief by appropriate Illinois proceedings, by a new claim of denial of due process for want of such relief. See *Mooney v. Holohan,* 294 U.S. 103, 79 L. ed. 791, 55 S. Ct. 340, 98 ALR 406."

2. The due process clause of the fourteenth amendment to the federal constitution does not require that the states follow the same rules of procedure which the sixth amendment requires of the federal government. The states are not required to appoint counsel to represent the accused in *all* criminal cases. This doctrine is succinctly stated in *Foster v. Illinois,* 332 U.S. at 136-137, 91 L. ed. at 1957-1958 wherein the court states:

> "The due process of law clause which the fourteenth amendment exacts from the states is a conception of fundamental justice * * * It is not satisfied by merely formal procedural correctness, nor is it confined by any absolute rule such as that which the sixth amendment contains in securing to an accused 'the assistance of counsel for his defense'. By virtue of that provision, counsel must be furnished to an indigent defendant, prosecuted in a Federal Court in every case, whatever the circumstances * * * Prosecutions in State Courts are not subject to this fixed requirement, so we have held upon fullest consideration. *Betts v. Brady,* 316 US 455, 464, 465, 86 L. ed. 1595, 1603."

Bute v. Illinois, 68 S. Ct. 763, 781, affirms this same principle.

3. A distinction is drawn between cases involving capital and non-capital crimes. When the offense is non-capital, the states are granted greater freedom to determine by their own rules whether the accused should be represented by counsel. See *Bute v. Illinois,* 68 S. Ct. 763, 781, 782. See also cases therein cited.

4. Due process of law requires that the state appoint counsel to represent the accused in all cases where

he has requested counsel. In the present case, counsel asserts that the accused did request counsel and that the request was denied; however, the alleged request and denial were not alleged in the courts below, are not now in the record, and hence cannot be asserted here in the first instance.

5. The establishment of rules determining when counsel should be appointed to represent an accused is a phase of police power; hence, it is a duty of the state. It is only when the police power is abused in a manner shocking to the conscience that the Federal Courts will intervene under the doctrine of "due process" to declare that a fair trial requires the state to appoint counsel to represent the accused. See *Powell v. Alabama,* 287 US 45, 77 L. ed. 158; *Smith v. O'Grady,* 312 U.S. 329, 85 L. ed. 859; *Williams v. Kaiser,* 323 US, 471, 89 L. ed. 398; *Tomkins v. Missouri,* 323 US 485, 89 L. ed. 407; *White v. Ragen,* 324 US 760, 89 L. ed. 1348; *Rice v. Olson,* 324 US 786, 89 L. ed. 1367; *Bute v. Illinois,* 68 S. Ct. 763, 92 L. ed. 735; *De Meerler v. Michigan;* 329 US 663, 91 L. ed. 584.

A review of certain of the leading cases referred to above indicates that it is only in the most *unusual* circumstances that the federal courts have declared that fourteenth amendment due process clause requires the state to appoint counsel.

In *Powell v. Alabama, supra,* ignorant Negro youths, alone in a strange city, charged with the capital offense of rape upon the persons of white girls, were forced to try their own cases.

In *Rice v. Olson, supra,* the accused was an ignorant Indian, and in addition, there were involved complex

legal questions arising from the fact that the alleged crime had occurred on Indian territory.

In *De Meerler v. Michigan, supra,* according to the portions of the record set forth in the opinion of the Michigan Court, 313 Mich. 548, 21 N.W. 2d 849, there was a hurried hearing, the accused was definitely confused as to whether he should plead guilty, and in fact, the hearing judge almost put words into his mouth.

In the present case, we find no such unusual circumstances. The relevant facts, *as shown by the record,* are these: the petitioner, then a minor aged 17, accused of a long series of burglaries and related crimes, pleaded guilty in open court and was sentenced. The petitioner did not request counsel nor was counsel appointed to represent him at the hearing.

Petitioner also alleges that he was misled by the District Attorney who offered him a light sentence if he would plead guilty. This allegation was raised in the original petition for writ of habeas corpus. R. 4. Apparently, through oversight, no answer to the allegation was made by the District Attorney. See R. 9. The claim was not considered by the Court of Common Pleas of Allegheny County, Pennsylvania, nor by the Superior Court of Pennsylvania, which heard the case on appeal. R. 7, 11, 161 Pa. Superior Ct. 58. The petitioner himself, although he alluded to the claim in veiled language, failed to raise the point in the petition to the Supreme Court of Pennsylvania, R. 15. It would appear, therefore, that as far as their proceedings are concerned, the petitioner has lost the point by default. Having failed to raise the issue in the Supreme Court of Pennsylvania,

he may not now raise it in a proceeding in which he seeks to have the Supreme Court of Pennsylvania decision overruled. The circumstances here present are similar to those involved in the oft-cited case of *Mooney v. Hollohan,* wherein the court stated (294 US at 115, 55 S. Ct. at 340):

> "We do not find that petitioner has applied to the state court for a writ of habeas corpus upon the grounds stated in his petition here. That corrective judicial process has not been invoked and it is not shown to be unavailable. Despite the many proceedings taken on behalf of the petitioner, an application for the perogative writ now asserted to be peculiarly suited to the circumstances disclosed by his petition has not been made to the state court. Orderly procedure, governed by principles we have repeatedly announced, requires that before this court is asked to issue a writ of habeas corpus, in the case of a person held under a state commitment, *recourse should be had to whatever judicial remedy afforded by the state may remain open.*" (Italics ours)

Numerous other claims of irregularity have been asserted, but none of these go to the roots of the case, nor do they establish the contention that the petitioner did not receive fundamental justice. In the paragraphs below brief mention is made of certain of these claims:

Petitioner's counsel has urged that the District Attorney committed error by listing more than one charge on several of the numerous indictments which were filed. The objection goes to the form and not to the merits. No harm whatsoever was done the petitioner since he was given only a suspended sentence on all indictments

containing more than one charge. The indictments on which he was sentenced were correctly drawn.

Counsel has objected to testimony of certain witnesses at the hearing, the objection being that this testimony did not justify conviction. This objection is meaningless. No witnesses were required to convict. The conviction was established by the petitioner's admission that he had committed the wrongs with which he was charged. The only purpose of the testimony was to aid the judge in imposing sentence.

Counsel has alluded to the complexity of the case, but we see nothing unusually complex about burglary. It is one of the oldest crimes, is *malum in se* and not merely *malum prohibitum*, and is recognizable as such by all ages and classes of society. The essense of the crime was explained by the District Attorney in open court, when he explained that Uveges (petitioner) was charged with entering many Pittsburgh homes for the purpose of stealing. He explained that "the loot" had been recovered. Uveges (petitioner) admitted that he *"began to enter dwellings August 16, 1938"* R. 45.

The petitioner's youthfulness has been referred to at length, but whether he was a youth or a man of maturity, it does not appear from the facts of record that counsel could have been of any material assistance to him.

A more serious contention, raised by counsel, is that petitioner intended to plead guilty to one act of burglary only and not to the entire 48 offenses with which he was charged. Once again we must look to the record, and

particularly to the report of the proceedings leading to the petitioner's imprisonment R. 41. We find absolutely nothing in these proceedings to show an intent by petitioner to plead guilty to only one act of burglary. It is apparent, also, that the presiding judge found no such intent for the record shows a sentence on four indictments and the judge has initiated each sentence. R. 24, 26, 28, 30.

Viewed in its entirety, counsel's argument apparently is intended to show a concerted effort by the Judge and other state officials to destroy the petitioner. The facts in issue provide no basis for such an argument. We contend, therefore, that the proceedure followed in this instance by the Commonwealth of Pennsylvania was not at variance with the federal constitutional requirements of *due* process of law.

Respectfully submitted,

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